

No. 11635

IN THE

United States Circuit Court of Appeals

FOR THE NINTH CIRCUIT

COAST VAN LINES, INC.,

Appellant,

vs.

BERT ARMSTRONG, L. A. CHARETTE, KING
FISHER, DAVE GARCIA, EARL GRAHAM,
IRA C. HOLER, LOUIS KANIER, EMRY KEY,
RICHARD MAGNUS, LEON T. McGROSSEN,
GEORGE W. PETERSON, THOMAS P. RE-
MUS, JOE P. SEVEDRA, SIDNEY H. SMITH,
LOUIE VAUGHN, NOBLE F. WHITE, HAR-
OLD N. WHEELER and MORRIS WOLF,

Appellees.

TRANSCRIPT OF RECORD

Upon Appeal from the District Court of the United States
for the Southern District of California,
Central Division

FILED
SEP - 11 1947
PAUL P. O'BRIEN,
CLERK.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italics; and likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible an omission from the text is indicated by printing in italics the two words between which the omission seems to occur.]

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Los Angeles 13, Calif. [1*]

In the United States District Court in and for the
Southern District of California
Central Division

Civil Action File No. 4690-OC

HARRY KENT, BERT ARMSTRONG, GEORGE L.
CALLARD, LEE CHAPEL, L. A. CHARETTE,
ED CUNNINGHAM, KING FISHER, MABLE
FURHITE, DAVE GARCIA, LESLIE HAM-
MOND, IRA C. HOLDEN, LOUIS KANIK,
EMERY KEYES, RICHARD MAGNUS, H. P.
McCORMACK, LEON McCRUDDEN, GEORGE
W. PETERSON, THOMAS P. REMUS, LOUIE
VAUGHN and MORRIS WOLF,

Plaintiffs added pursuant to Order of Court of March 4,
1946:

EMERY KELLY, JOSEPH BRICKER, HAROLD
N. WHEELER, SIDNEY H. SMITH, EARL
GRAHAM, JOE P. SAVEDRA,

Plaintiffs,

vs.

COAST VAN LINES, INCORPORATED, a California
corporation,

Defendant.

AMENDED COMPLAINT

(For Compensation Under Fair Labor Standards Act
of 1938, and for Accounting)

As Amended Pursuant to the Order of Court of
March 4, 1946

In accordance with the Order of Court made herein
on March 4, 1946, requiring the amending of the Com-

plaint to include all additional parties plaintiff, come now the plaintiffs above named and by this Amended Complaint complain of the defendant and for a cause of action allege: [2]

I.

That plaintiffs have since August 15, 1942, been employed by defendant for various periods of time and at various wage rates, and jointly and severally bring this action under and by virtue of the provisions of an Act of Congress entitled "Fair Labor Standards Act of 1938", and particularly Section 16(b) thereof, (Pub. No. 718, 75th Cong.; 52 Stat. 1060), adopted June 25, 1938, hereinafter referred to as "the Act", for compensation due them for hours during which plaintiffs were employed in excess of the minimum schedules established by said Act, and for unpaid overtime compensation, and for additional equal amounts of liquidated damages under the Act, and for attorneys' fees as provided in said Act.

II.

That defendant is now and at all times herein mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of California having its principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, where it is duly authorized to conduct its business.

III.

Jurisdiction is conferred on this Court by Section 41(8) 28 U. S. C. A. (Judicial Code) 24, giving the District Court original jurisdiction "of all suits and proceedings arising under any law regulating commerce", without re-

gard to the citizenship of the parties or the sum or value in controversy, and by Section 16(b) of the Act.

IV.

That plaintiffs are informed and believe, and upon such information and belief allege, that continuously since August 15, 1942, defendant has been engaged in the business of packing, crating, storing, shipping, handling and working on goods, wares, [3] products, commodities and merchandise, the greater part of which was transported or otherwise disposed of among the several States and from the State of California to places outside thereof; and that defendant knew or had reason to believe at all the times herein mentioned that such goods had already been or would be sold for commerce and were in the course of being shipped in commerce; that said goods and products were shipped, transported and otherwise disposed of among the several States and from the State of California to points outside thereof.

V.

That plaintiffs are informed and believe and upon such information and belief allege, that since August 15, 1942, and during all of the respective periods when each of them has been in the employ of defendant, they have been engaged and employed in handling and otherwise working on goods and in a business and at an occupation necessary to the transportation of goods in interstate commerce within the meaning of said Fair Labor Standards Act of 1938.

VI.

That on frequent occasions from August 15, 1942, to the date hereof plaintiffs were employed for certain hours in excess of the work week established by Section

7, Subdivision (2) of said Act, but that defendant failed to pay the compensation or overtime prescribed by the provisions of said section. That the number of hours and amount of compensation for such overtime for each plaintiff is a matter reported on the books and accounts kept and maintained by defendant, but plaintiffs have no accurate records of said hours and compensation claimed to be due, and accordingly an account should be rendered by defendant to fix and determine the amount of said claims. That there is due, owing and unpaid from defendant to plaintiffs and each of them such compensation for time [4] during which plaintiffs and each of them were employed in excess of the work week established by said Act in such amounts as shall be determined by said accounting.

VII.

That said Act provides that an employer who violates the provisions of Section 7 of said Act shall be liable to the employees affected, not only in the amount of their unpaid overtime compensation, but in an additional equal amount as liquidated damages, and that there is due, owing and unpaid by defendant to plaintiffs and each of them such additional equal amounts as liquidated damages as shall be found to be due to plaintiffs by said accounting.

VIII.

That said Act further provides that an action to recover such liability may be maintained by any one or more employees for and in behalf of himself, or themselves, and other employees similarly situated, and plaintiffs aver that this action was brought for and in behalf of the originally named plaintiffs and other employees similarly situated; that additional plaintiffs have now

been included herein, and the plaintiffs now named are all of those in whose behalf this action is to be maintained.

IX.

Further, said Act provides that the Court, in addition to any judgment awarded to plaintiffs, shall allow a reasonable attorneys' fee to be paid by the defendant, as well as costs of action, and plaintiffs aver that they have been required to employ attorneys Charles E. Beardsley and Herbert V. Walker to represent them and bring this action in order to establish such liability.

Wherefore, plaintiffs pray that defendant be required to account to plaintiffs, and each of them, for the total number of hours which each has been employed between August 15, 1942, and the date of this Complaint, in excess of the minimum work week prescribed [5] by said Act, and the amount of compensation that is required to be paid by said Act, and that upon such sums being computed a judgment be entered for plaintiffs and each of them and against defendant for such amount as the accounting shall show each plaintiff is entitled to receive, together with an equal additional amount as liquidated damages, and a reasonable sum for attorneys' fees and costs of suit incurred herein, and for all other relief which to the Court shall seem proper.

Dated: Mar. 15, 1946.

HERBERT V. WALKER and
CHARLES E. BEARDSLEY

By Herbert V. Walker

Attorneys for Plaintiffs [6]

[Verified]

[Affidavit of Service by Mail]

[Endorsed]: Filed Mar. 23, 1946. [7]

[Title of District Court and Cause]

AMENDED ANSWER

Comes now the defendant and answering the amended complaint on file herein, admits, denies and alleges as follows:

I.

Answering the allegations contained in paragraph IV, admits that this defendant has been continuously engaged in the business of packing, crating, storing, shipping, handling, and working on of goods, wares, products, commodities and merchandise. Other than herein admitted, denies generally and specifically each and every allegation contained in paragraph IV.

II.

Denies generally and specifically each and every allegation contained in paragraph V.

III.

Denies generally and specifically each and every allegation contained in paragraph VI. [8]

IV.

Answering the allegations contained in paragraph VII, this answering defendant admits that the Act provides for liquidated damages as alleged in said paragraph. Other than as herein admitted, however, denies each and every allegation contained in paragraph VII.

V.

Answering the allegations contained in paragraph IX, this answering defendant admits that the Act provides for attorneys' fees. Other than as herein admitted, however, denies each and every allegation contained therein.

For a Second, Further and Separate and Distinct Defense to Plaintiffs' First Amended Complaint on File Herein and in Defense of the Respective Claims of Each and Every Plaintiff Herein, Defendant Alleges:

I.

Defendant hereby repeats and incorporates herein by reference, the same as if herein again fully set forth, all statements and denials of paragraphs I to V inclusive, of his answer, as hereinabove alleged and stated; and, in addition thereto, defendant affirmatively alleges that this defendant, at all times mentioned in plaintiffs' said complaint was and is a service establishment; that at all times mentioned in plaintiffs' amended complaint, a greater part of defendants' servicing was and is in intra-state commerce; that at all times mentioned in plaintiffs' amended complaint, said plaintiffs when, as and if they were employed by defendant, were employed as employees of a service establishment and that they and each of them were, at all such times, engaged in a service establishment, the greater part of whose servicing was and is in intra-state commerce. [9]

II.

That, by reason of the facts hereinabove affirmatively alleged, the provisions of an Act of Congress entitled "The Fair Labor Standards Act of 1938" and, particularly, Section 16b thereof, (Pub. No. 718—75th Congress; 52 Statutes 1060) adopted June 25, 1938, or as amended at any time, has no application to this defendant

or to any of the plaintiffs herein but that this defendant and each of the plaintiffs herein is exempt from the application thereof under and by virtue of Section 213(a)(2), U. S. C. A.

For a Third, Further and Separate and Distinct Defense to Plaintiffs' First Amended Complaint on File Herein and in Defense of the Respective Claims of Each and Every Plaintiff Herein, Defendant Alleges:

I.

Defendant hereby repeats and incorporates herein by reference, the same as if herein again fully set forth, all statements and denials of paragraphs I to V inclusive, of his answer, as hereinabove alleged and stated; and, in addition thereto, defendant affirmatively alleges that this defendant, at all times mentioned in plaintiffs' said complaint was and is a retail establishment; that at all times mentioned in plaintiffs' amended complaint, a greater part of defendants' selling was and is in intra-state commerce; that at all times mentioned in plaintiffs' amended complaint, said plaintiffs when, as and if they were employed by defendant, were employed as employees of a retail establishment and that they and each of them were, at all such times, engaged in a retail establishment, the greater part of whose selling was and is in intra-state commerce.

That, by reason of the facts hereinabove affirmatively alleged, the provisions of an Act of Congress entitled

“The [10] Fair Labor Standards Act of 1938” and, particularly, Section 16b thereof, (Pub. No. 718—75th Congress; 52 Statutes 1060) adopted June 25, 1938, or as amended at any time, has no application to this defendant or to any of the plaintiffs herein but that this defendant and each of the plaintiffs herein is exempt from the application thereof under and by virtue of Section 213(a)(2), U. S. C. A.

For a Fourth, Further and Separate and Distinct Defense to Plaintiffs’ First Amended Complaint on File Herein and in Defense of the Respective Claims of Each and Every Plaintiff Herein, Defendant Alleges:

I.

Defendant hereby repeats and incorporates herein by reference, the same as if herein again fully set forth, all statements and denials of paragraphs I to V inclusive; of his answer, as hereinabove alleged and stated; and, in addition thereto, defendant alleges further that the said plaintiffs, and each of them, when, as and if they were employed by this defendant in the handling of and working on of goods in a business and at an occupation necessary to the transportation of goods in inter-state commerce, the plaintiffs and each of them were employed as drivers of motor vehicles, trucks, trailers, tractors and semi-trailers and similar transportation equipment and in the maintenance and servicing of such transportation equipment; that they were employed to load and unload such transportation equipment and to weigh, mark, pack

and crate the goods, wares and merchandise constituting the cargoes of such transportation equipment; that they, and each of them, at all times mentioned in their complaint devoted a substantial portion of their time to the safety of operations and equipment; and that they and each of them actually engaged, a substantial portion of their [11] time, in the driving, maintenance and servicing of the aforesaid transportation equipment and in the weighing, marking, packing and crating and loading of the cargoes of such transportation equipment; that, by reason of the facts as hereinabove alleged, the defendant and each of the plaintiffs hereinabove is exempt from the application of the provisions of an Act of Congress entitled "The Fair Labor Standards Act of 1938" and, particularly, Section 16b thereof, (Pub. No. 718—75th Congress; 52 Statutes 1060) adopted June 25, 1938, or as amended at any time.

Wherefore, this answering defendant prays plaintiffs take nothing by their amended complaint; for its costs incurred herein and for such other and further relief as this court may deem just and proper.

PRENTISS MOORE

Attorney for Defendant

Dated this 23rd day of October, 1946. [12]

[Verified]

[Endorsed]: Filed Oct. 23, 1946. [13]

[Title of District Court and Cause]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The above entitled cause having come on regularly for trial in the courtroom of and before Honorable J. F. T. O'Connor, Judge Presiding, plaintiffs Bert Armstrong, L. A. Charette, King Fisher, Noble F. White, named in the Amended Complaint as Mable Furhite, Dave Garcia, Ira C. Holder, named in the Amended Complaint as Ira C. Holden, Louis Kanir, named in the Amended Complaint as Louis Kanik, Emery Key, named in the Amended Complaint as Emery Keyes, Richard Magnus, Leon McCrossen, named in the Amended Complaint as Leon McCrudden, George W. Peterson, Thomas P. Remus, Louie Vaughn, Morris Wolf, Harold N. Wheeler, Sydney H. Smith, Earl Graham and Joe P. Savedra, all appearing in person and by their attorneys, Herbert V. Walker and Charles E. Beardsley, and defendant Coast Van Lines, Inc., a California corporation, appearing by its officers and Prentiss Moore, Esq., its attorney, and the trial of said cause having proceeded on October 23, October 24, October 28, October 29, and [14] November 4, 1946, and evidence both oral and documentary having been offered and received, and the cause having been argued and submitted to the court for decision on said November 4, 1946, and good cause therefore appearing, the court now makes its Findings of Fact and Conclusions of Law in writing as follows:

FINDINGS OF FACT

The Court finds the following facts from the evidence presented at said trial:

I.

That the plaintiffs hereinafter named in the schedule hereunto annexed, marked Schedule A, and by this reference incorporated in these Findings, have, since August 15, 1942, been employed by the defendant for the various periods of time and at the various wage rates which are respectively set after their names in said Schedule A; that said plaintiffs have jointly and severally brought this action under and by virtue of the provisions of an Act of Congress entitled "Fair Labor Standards Act of 1938" and particularly Section 16(b) thereof, Pub. No. 718, 75th Cong.; 52 Stat. 1060), adopted June 25, 1938, hereinafter referred to as "the Act", for compensation due them for hours during which said plaintiffs were employed in excess of the minimum schedules established by said Act, and for unpaid overtime compensation, and for additional equal amounts of liquidated damages under the Act, and for attorneys' fees as provided in said Act.

II.

That defendant Coast Van Lines; Incorporated, is now, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California, having its principal office and place of business in the City of Los Angeles, County of Los Angeles, State of California, where it is duly authorized to conduct its business. [15]

III.

That jurisdiction is conferred on this Court by Section 41(8) 28 U. S. C. A. (Judicial Code) 24, giving the District Court original jurisdiction "of all suits and proceedings arising under any law regulating commerce", without regard to the citizenship of the parties or the sum or value in controversy, and by Section 16(b) of the Act.

IV.

That it is true that continuously since August 15, 1942, defendant has been engaged in the business of packing, crating, storing, shipping, handling and working on goods, wares, produces, commodities and merchandise, a considerable part of which was transported or otherwise disposed of among the several States and from the State of California to places outside thereof; and that defendant knew or had reason to believe at all of the times herein mentioned that such goods had already been or would be prepared for commerce and were in the course of being shipped in commerce; and that it is true that said goods and products were shipped, transported, and otherwise disposed of among the several States and from the State of California to points outside thereof. The Court finds from the testimony of defendant that the proportion of goods handled by defendant during the periods at issue which moved in interstate commerce, and the proportion moving in intrastate commerce, are very nearly the same, and that there was not very much difference between the amount moving in interstate commerce and in intrastate commerce, and that for the purpose of these Findings the Court adopts the figures arrived at on an average taken from an analysis of the defendant's records presented in defendant's testimony,

which showed 55-1/3 per cent intrastate and 44-2/3 per cent interstate business.

V.

That it is true as to each of the plaintiffs named in [16] Schedule A hereunto annexed that since August 15, 1942, and during all of the respective periods when each of them has been in the employ of the defendant, each has been engaged and employed in handling and otherwise working on goods, and in a business and at an occupation necessary to the transportation of goods in interstate commerce within the meaning of the Fair Labor [JFT] a substantial Standards Act of 1938, during ~~the greater~~ portion of the time in each work week.

VI.

That it is true that on frequent occasions from August 15, 1942, to the date of said trial, certain of the plaintiffs named in said Schedule A were employed for certain hours in excess of the work week established by Section 7, Subdivision 2 of said Act, but that defendant failed to pay the compensation or overtime prescribed by the provisions of said section for those hours. That the number of hours and the amount of compensation for such overtime for each of said plaintiffs is a matter required to be reported on the books and accounts kept and maintained by defendant, but that plaintiffs have kept no accurate record of said hours or compensation claimed to be due, and that therefore defendant has been required to render an account to fix and determine the amounts of such overtime worked and the rates of pay in effect and applicable to each of said hours; that there

is due, owing and unpaid from defendant to said plaintiffs and each of them such compensation for time during which said plaintiffs and each of them were employed in excess of the work week established by said Act in the amounts which are specifically set forth, and for the hours, and at the rates of pay which are specifically set forth after the names of said plaintiffs, respectively, in Schedule A which is hereunto annexed.

VII.

That it is true that said Act provides that an employer who violates the provisions of Section 7 of said Act shall be liable [17] to the employees affected, not only in the amount of their unpaid overtime compensation, but in an additional equal amount as liquidated damages, and that there is due, owing and unpaid by defendant to plaintiffs and each of them, such additional equal amounts as liquidated damages as are found due to the respective plaintiffs named in said Schedule A which is hereunto annexed.

VIII.

That it is true that said act further provides that an action to recover such liability may be maintained by any one or more employees for and in behalf of himself or themselves and other employees similarly situated, and plaintiffs have brought this action for the benefit of all of the plaintiffs named in the first Amended Complaint on file herein, but the same does not purport to bind or affect any plaintiffs or former employees not named in said amended complaint.

IX.

That it is true that said Act further provides that the Court, in addition to any judgment awarded to plaintiffs, shall allow a reasonable attorneys' fee to be paid by the defendant, as well as costs of action; that said plaintiffs for whom recovery is herein ordered, are not, nor is any of them, members of the Bar, and that they have been required to employ Attorneys Charles E. Beardsley and Herbert V. Walker to represent them and bring this action and try the same in order to establish the liability of defendant to said plaintiffs, and the court finds that the services of said attorneys in bringing the within action, and handling the same through the trial thereof in the District Court is the sum of \$1000.00, and said plaintiffs are entitled to judgment against the defendant, in addition to the amount of their overtime and the liquidated damages hereinabove referred to, for said sum as a reasonable attorneys' fee herein. [18]

X.

The Court finds that it is not true, as alleged in the Amended Answer of defendant Coast Van Lines, Incorporated, or at all, that defendant was or is a service establishment; that it is not true that at the times mentioned in plaintiffs' Amended Complaint the greater part of defendant's servicing was or is in intrastate commerce; that it is not true that at the times mentioned in plaintiff's complaint, said plaintiffs, when they were employed by defendant, were employed as employees of a service establishment or that they or each or any of them were or was at any of such times engaged in a service establishment, or an establishment the greater part of whose servicing was or is in intrastate commerce.

XI.

That it is not true, as alleged in said Amended Answer, or at all, that by reason of the facts therein alleged, or at all, the provisions of the Fair Labor Standards Act of 1938 have no application to the defendant or to any of the plaintiffs, and that it is not true that the defendant or each or any of the plaintiffs is exempt from the application of said Act under or by virtue of Section 13(a) of the Act, which is Section 213(a)(2), U. S. C. A., or otherwise, or at all. On the contrary, the Court finds that the provisions of said Act, and particularly Section 16(b) thereof, are applicable to all of the plaintiffs named in said Schedule A.

XII.

That it is not true, as alleged in said Amended Answer, or at all, that defendant was at any of the times mentioned in plaintiffs' Amended Complaint, or is, a retail establishment; that it is true, as in these Findings above alleged, that at the times mentioned in plaintiffs' Amended Complaint the intrastate shipments of defendant corporation averaged a larger proportion of its business than the interstate shipments; that it is not true that at the times mentioned in their Complaint, said plaintiffs named in Schedule A hereunto [19] annexed were, or any of them was, employed as employees of a retail establishment, the greater part of whose selling was and is in intrastate commerce, but on the contrary, the court finds substantial [JFT]

that the ~~greater~~ portion of each of said plaintiffs' work and activities for all of the times referred to in plaintiffs' Amended Complaint, was devoted to interstate shipments and activities.

XIII.

That is not true, as alleged in said Amended Answer, or at all, that said plaintiffs, or any of them, when they were employed by the defendant in the handling of, and working on, of goods in a business and at an occupation necessary to the transportation of goods in interstate commerce, were employed as drivers of motor vehicles, trucks, trailers, tractors, semi-trailers, or other transportation equipment, or in the maintenance and servicing of such transportation equipment, or in the loading or unloading of such transportation equipment, or the weighing, marking, packing, crating of goods, wares, or merchandise constituting the cargoes of such transportation equipment in such a manner that either or any of them devoted a substantial portion of his time to the safety of operations and equipment; that it is not true that said plaintiffs or any of them actually engaged, a substantial portion of their time, in the driving, maintenance, or servicing of the aforesaid transportation equipment, or in the weighing, marking, packing, crating or loading of the cargoes of such transportation equipment in such manner as to be exempt from the application of the provisions of the Fair Labor Standards Act of 1938. That it is not true that either or any of said plaintiffs was so employed or engaged at any time during the period of his employment by defendant corporation as to come within the provisions of Section 13(b) of the Act, or so as to come within that class of employees as to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 [20] of the Motor Carrier Act of 1935, or the provisions of Part 1 of the Interstate Commerce Act, but that, on the contrary, said plaintiffs

did and do, and each of them did and does come within the provisions of Section 16(b) of the Fair Labor Standards Act of 1938 as amended.

XIV.

That it is true that each of the plaintiffs named in Schedule A hereunto annexed was, during the greater part, and during practically all of the time in each work week of his employment by defendant corporation, working on goods, wares and merchandise which were being handled by defendant under the provisions of a contract with the Navy Department of the United States of America, and that by far the greater part of defendant's business during said period was such Navy contract business. That such contracts were obtained by defendant in competitive bidding with other concerns engaged in the same or similar business and provided for the moving, packing, shipping, crating, and storing of Navy goods and goods and merchandise of Navy personnel.

XV.

That there is no evidence to prove that, and the Court finds it not to be true that plaintiffs Harry Kent, George L. Callard, Joseph Bricker, Lee Chapel, Ed Cunningham, Leslie Hammond, Clarence H. Jones, and H. P. McCormick are, or any of them is, entitled to recover, or has earned and failed to be paid, any overtime compensation as in the Amended Complaint herein alleged, or at all.

(Schedule A, as hereunto annexed, is by the references hereinabove contained made a part of these Findings of Fact.) [21]

CONCLUSIONS OF LAW

As Conclusions of Law from the foregoing Findings of Fact, the Court holds:

I.

That the plaintiffs Harry Kent, George L. Callard, Joseph Bricker, Lee Chapel, Ed Cunningham, Leslie Hammond, Clarence H. Jones and H. P. McCormick are not, nor is either or any of them, entitled to judgment herein, but that judgment should be entered herein that said plaintiffs take nothing by their complaint herein.

II.

That judgment should be made and entered herein in favor of the following plaintiffs and against the defendant in the following respective amounts for actual overtime unpaid and liquidated damages as provided for in the Act:

<u>Name</u>	<u>Actual Overtime</u>	<u>Liquidated Damages</u>	<u>Total</u>
Bert Armstrong	467.85	467.85	935.70
L. A. Charette	404.52	404.52	809.04
King Fisher	108.83	108.83	217.66
Dave Garcia	205.16	205.16	410.32
Earl Graham	161.02	161.02	322.04
Ira C. Holder	368.09	368.09	736.18
Louis Kanier	475.41	475.41	950.82
Emry Key	354.82	354.82	709.64
Richard Magnus	368.91	368.91	737.82

<u>Name</u>	<u>Actual Overtime</u>	<u>Liquidated Damages</u>	<u>Total</u>
Leon T. McCrossen	280.64	280.64	561.28
George W. Peterson	151.94	151.94	303.88
Thomas P. Remus	261.81	261.81	523.62
Joe P. Sevedra	152.00	152.00	304.00
Sidney H. Smith	333.72	333.72	667.44
Louie Vaughn	475.89	475.89	951.78
Noble F. White	202.19	202.19	404.38
Harold N. Wheeler	109.86	109.86	219.72
Morris Wolf	487.58	487.58	975.16
	<hr/>	<hr/>	<hr/>
Total	\$5,370.24	\$5,370.24	\$10,740.48
			[22]

III.

That judgment should be made and entered herein in favor of all of the plaintiffs in Paragraph II above named, and against the defendant, for attorneys' fees for said plaintiffs' attorneys, Charles E. Beardsley and Herbert V. Walker, in the sum of \$ and for said plaintiffs' costs of suit herein.

Let judgment be entered herein accordingly.

Done in open court this 3 day of December, 1946.

J. F. T. O'CONNOR

U. S. District Judge [23]

SCHEDULE "A"
ACTUAL OVERTIME RATE

	<u>Weeks</u>	<u>Hrs. @ 5½ Per Wk.</u>	<u>Rate</u>	<u>Amount</u>
BERT ARMSTRONG				
8-22-42—12-31-42 (Gov. Reports)	19	104½ @ 1.00	50¢	\$ 52.25
4- 1-43—12-31-43 "	39	214½ @ 1.00	50¢	107.25
1- 1-44—12-31-44	52	286 @ 1.00	50¢	143.00
1- 1-45— 3-31-45	13	71½ @ 1.00	50¢	35.75
4- 1-45—12-31-45	37	203½ @ 1.02½	51¼¢	104.30
3- 2-46— 3-3-46	4	22 @ 1.15	57½¢	12.65
4- 1-46— 4-25-46	4	22 @ 1.15	57½¢	12.65
	168	924		467.85
L. A. CHARETTE				
6-43 —9-15-43	16	88 @ .95	47½¢	41.80
9-16-43—3-31-45	79	434½ @ 1.00	50¢	217.25
4- 1-45—3-31-46	46	252 @ 1.02½	51¼¢	129.66
4- 1-46—5-8-46	5	27½ @ 1.15	57½¢	15.81
	146	803		404.52
KING FISHER				
1- 5-44— 5-17-44	19	104½ @ .95	47½¢	49.64
7-31-45—12-19-45	21	115½ @ 1.02½	51¼¢	59.19
	40	220		108.83
DAVE GARCIA				
11-22-44—3-31-45	19	104½ @ 1.00	50¢	52.25
4- 1-45—3-31-46	52	286 @ 1.02½	51¼¢	146.58
4- 1-46—4-10-46	2	11 @ 1.15	57½¢	6.33
	73	401½		205.16

	<u>Weeks</u>	<u>Hrs. @ 5½ Per Wk.</u>	<u>Rate</u>	<u>Amount</u>
EARL GRAHAM				
8-22-42— 6-30-43	45	247½ @ .90	45¢	\$111.38
7- 1-43—11-43	19	104½ @ .95	47½¢	49.64
	64	352		161.02
IRA C. HOLDER				
9-1-43—10-30-43	8	44 @ .85	42½¢	18.70
11-1-43—10-15-44	47	258½ @ .95	47½¢	122.79
1-1-45— 3-31-45	13	71½ @ 1.00	50¢	35.75
4-1-45— 3-31-46	52	286 @ 1.02½	51¼¢	146.58
4-1-46— 7-10-46	14	77 @ 1.15	57½¢	44.28
	134	737		368.09
LOUIS KANIER				
9-15-42—2-28-43	24	132 @ .80	40¢	52.80
3- 1-43—6-30-44	70	385 @ .95	47½¢	182.88
7- 1-44—3-31 45	39	214½ @ 1.00	50¢	107.25
4- 1-45—3- 6-46	47	258½ @ 1.02½	51¼¢	132.48
	180	990		575.41
				[24]
EMRY KEYES				
1- 6-44—10-15-44	41	225½ @ .95	47½¢	107.11
10-15-44— 3-31-45	24	132 @ 1.00	50¢	66.00
4- 1-45— 3-23-46	51	280½ @ 1.02½	51¼¢	143.76
4-29-46— 7-17-46	12	66 @ 1.15	57½¢	37.95
	128	704		354.82

	<u>Weeks</u>	<u>Hrs. @</u> <u>5½ Per Wk.</u>	<u>Rate</u>	<u>Amount</u>
RICHARD MAGNUS				
6-43 — 9-15-43	16	88 @ .95	47½¢	\$ 41.80
9-15-43— 3-31-45	80	440 @ 1.00	50¢	220.00
4- 1-45—12-19-45	38	209 @ 1.02½	51¼¢	107.11
	134	737		368.91

LEON McCRUDDEN				
LEON T. McCROSSEN				
1-15-43—10-15-43	39	214½ @ .95	47½¢	101.89
10-15-43— 7-31-45	65	357½ @ 1.00	50¢	178.75
	104	572		280.64

GEORGE W. PETERSON				
4-19-43—12-31-43	37	203½ @ .95	47½¢	96.66
1- 1-44— 4-25-44	16	88 @ 1.00	50¢	44.00
10-15-45—11- 7-45	4	22 @ 1.02½	51¼¢	11.28
	57	313½		151.94

THOMAS P. REMUS				
7-7-44—3-31-45	35	192½ @ 1.00	50¢	96.25
4-1-45—3-31-46	52	286 @ 1.02½	51¼¢	146.58
4-1-46—5- 8-46	6	33 @ 1.15	57½¢	18.98
	93	511½		261.81

JOE P. SEVEDRA				
6-1-44—3-31-45	44	242 @ 1.00	50¢	121.00
4-1-45—6-15-45	11	60½ @ 1.02½	51¼¢	31.00
	55	302½		152.00

SIDNEY H. SMITH				
8-22-42—12-31-42	19	104½ @ .90	45¢	47.03
1- 1-43— 3-31-45	94	517 @ 1.00	50¢	258.50
4- 1-45— 6- 9-45	10	55 @ 1.02½	51¼¢	28.19
	123	676½		333.72

	<u>Weeks</u>	<u>Hrs. @ 5½ Per Wk.</u>	<u>Rate</u>	<u>Amount</u>
LOUIE VAUGHN				
8-22-42—12-31-42	19	104½ @ .90	45¢	\$ 47.03
1- 1-43— 3-31-45	117	643½ @ 1.00	50¢	321.75
4-45 —12-19-45	38	209 @ 1.02½	51¼¢	107.11
	174	957		475.89
NOBLE F. WHITE				
3-20-44—5-24-44	10	55 @ .90	45¢	24.75
5-24-45—3-46	45	247½ @ 1.02½	51¼¢	126.84
4- 1-46—7-17-46	16	88 @ 1.15	57½¢	50.60
	71	390½		202.19
				[25]
HAROLD N. WHEELER				
1-21-44—12-15-44	47	258½ @ .85	42½¢	109.86
MORRIS WOLF				
8-22-42— 6-30-43	43	236½ @ 1.00	50¢	118.25
7- 1-43— 2-22-45	86	473 @ 1.10	55¢	260.15
6-26-45—11- 7-45	14	77 @ 1.12½	56¼¢	43.31
11- 8-45— 3-31-46	20	110 @ 1.02½	51¼¢	56.38
4- 1-46— 4-17-46	3	16½ @ 1.15	57½¢	9.49
	166	913		487.58
				[26]

[Affidavit of Service by Mail]

[Endorsed]: Filed Dec. 3, 1946. [27]

United States District Court
Southern District of California
Central Division

No. 4690 O'C Civil

HARRY KENT, et al.

Plaintiffs,

vs.

COAST VAN LINES, INCORPORATED, a California
corporation,

Defendant.

JUDGMENT

Judgment is hereby entered in favor of the plaintiffs hereinafter named for the amounts set opposite the names of each, and judgment is further ordered in the sum of One Thousand Dollars (\$1000) in favor of Herbert V. Walker and Charles E. Beardsley, and against the defendant, Coast Van Lines, Incorporated.

Bert Armstrong	\$935.70
L. A. Charette	809.04
King Fisher	217.66
Dave Garcia	410.32
Earl Graham	322.04
Ira C. Holder	736.18
Louis Kanier	950.82
Emry Key	709.64
Richard Magnus	737.82
Leon T. McCrossen	561.28
George W. Peterson	303.88

Thomas P. Remus	523.62
Joe P. Sevedra	304.00
Sidney H. Smith	667.44
Louie Vaughn	951.78 [28]
Noble F. White	404.38
Harold N. Wheeler	219.72
Morris Wolf	975.16
	<hr/>
	\$10,740.48

And judgment is hereby ordered against Harry Kent, George L. Callard, Joseph Bricker, Lee Chapel, Ed Cunningham, Leslie Hammond, Clarence H. Jones, and H. P. McCormick, plaintiffs in this action, and in favor of the defendant.

And judgment is hereby ordered in favor of the plaintiffs for costs.

Costs taxed at \$49.00.

Dated December 3rd, 1946.

J. F. T. O'CONNOR
U. S. District Judge

Judgment entered Dec. 3, 1946. Docketed Dec. 4, 1946. Book COB 40, page 433. Edmund L. Smith, Clerk; by Francis E. Cross, Deputy.

[Endorsed]: Filed Dec. 3, 1946. [29]

[Title of District Court and Cause]

MOTION FOR NEW TRIAL

To Harry Kent, Bert Armstrong, George L. Gallard, Lee Chapel, L. A. Charette, Ed Cunningham, King Fisher, Mable Furhite, Dave Garcia, Leslie Hammon, Ira C. Holden, Louis Kanik, Emery Keyes, Richard Magnus, H. O. McCormack, Leon McCrudden, George W. Peterson, Thomas P. Remus, Louie Vaughn and Morris Wolf, Plaintiffs, and

To Herbert B. Walker and Charles E. Beardsley, Their Attorneys:

You and Each of You Will Please Take Notice that the [30] defendant intends to move the above entitled court to vacate and set aside the decision and judgment of the court rendered in the above entitled action, and to grant a new trial of said cause upon the following grounds affecting the substantial rights of said defendant, to-wit:

1. That the decision and judgment is contrary to the law in the case.
2. That the decision and judgment is contrary to evidence in the case.
3. That the decision and judgment is contrary to the law and evidence in the case.
4. That the court refused to admit proper evidence offered by the defendant.
5. That the decision and judgment is contrary to the evidence in the case, particularly in respect to the evidence adduced both by plaintiffs and the defendant, and uncon-

tradicted in any material aspect, that the defendant was at all times in the pleadings mentioned, a service establishment the greater part of whose servicing was in intra-state business.

6. That the decision and judgment is contrary to the law in the case, particularly with respect to Section 213 U. S. C. A. which provides in part that the provisions of Sections 206 and 207 of the Fair Labor Standards Act shall not apply with respect to any employee engaged in any retail or service establishment the greater part of whose selling or servicing is in intra-state commerce.

7. That the court committed prejudicial and reversible error in the trial of the above entitled cause in refusing to allow defendant to cross-examine plaintiffs and plaintiffs' witnesses with respect to the duties and activities of the plaintiffs, and particularly with respect to the amount of time devoted by the respective plaintiffs to activities affecting safety of operations, such as driving, repairing, maintaining, loading and checking motor vehicles engaged [31] in inter-state commerce, and as to the amount of time devoted to assisting or helping in any or all of the above activities affecting the safety of operation of motor vehicles engaged in inter-state commerce.

8. That the decision and judgment is contrary to the evidence in the case adduced by both plaintiffs and by the defendant and uncontradicted in any material respect, that certain plaintiffs, to-wit: Emery Keyes, Noble White, Louie Vaughn, Richard Magnus, Dave Garcia,

Ira C. Holden, George W. Peterson, Sidney Smith, King Fisher, Joe Sevedra and Harold N. Wheeler, devoted a substantial portion of their time to driving, repairing, maintaining and loading motor vehicles engaged in interstate commerce, or in helping or assisting in said activities.

9. That the decision and judgment is contrary to the law in the case, particularly with respect to the plaintiffs, Emery Keyes, Noble White, Louie Vaughn, Richard Magnus, Dave Garcia, Ira C. Holden, George W. Peterson, Sidney Smith, King Fisher, Joe Sevedra and Harold N. Wheeler, because Section 213 U. S. C. A. provides in part that the provisions of Sections 206 and 207 of the Fair Labor Standards Act shall not apply with respect to any employee to the extent that such employee is exempted by regulations or orders of the Administrator issued under Section 214 of the Fair Labor Standards Act.

Said motion will be made and based upon the records and files in the above entitled action and upon the Minutes of the court.

Dated this 13th day of December, 1946.

PRENTISS MOORE

Attorney for Defendant [32]

[Affidavit of Service by Mail]

[Endorsed]: Filed Dec. 13, 1946. [33]

[Minutes: Tuesday, December 31, 1946]

Present: The Honorable J. F. T. O'Connor, District Judge.

Good cause appearing therefor, it is by the Court ordered that the motion of defendant for a new trial, argued by counsel for defendant on December 30, 1946, be, and the same hereby is, denied. [34]

[Title of District Court and Cause]

NOTICE OF APPEAL

To Harry Kent, et al., Plaintiffs and Respondents, and
to Messrs. Walker and Beardsley, Their Attorneys:

Notice Is Hereby Given that Coast Van Lines, Inc., a corporation, defendant and appellant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on ruling denying motion for new trial on December 30, 1946.

Dated this 12th day of March, 1947.

PRENTISS MOORE

Attorney for Defendant and Appellant [35]

[Affidavit of Service by Mail]

[Endorsed]: Filed & mld. copy to Messrs. Walker and Beardsley, attys. for plfs., Mar. 14, 1947. [36]

[Title of District Court and Cause]

EXTENSION OF TIME FOR FILING AND
DOCKETING RECORD ON APPEAL

Good cause appearing therefor, It Is Hereby Ordered that defendant and appellant may have to and including the 22nd day of May, 1947, within which to docket its appeal and the record on appeal in the above entitled cause in the Circuit Court of Appeals for the Ninth Circuit.

Dated this 22nd day of April, 1947.

C. E. BEAUMONT

Judge

[Endorsed]: Filed Apr. 22, 1947. [37]

[Title of District Court and Cause]

STATEMENT OF POINTS UPON WHICH
APPELLANT INTENDS TO RELY

Comes now the appellant in the above entitled cause and hereby states the points upon which it intends to rely on the appeal herein, as follows:

I.

That the District Court erred in holding that appellant was not, and is not, a service establishment within the meaning of Section 13 of the Fair Labor Standards Act of 1938 (52 Stat. 1067) providing that the wage and hour provisions of said Act shall not apply to any employee engaged in any service establishment the greater

part of whose servicing is in intrastate commerce. (29 U. S. C. A., Sec. 213(a)(2).)

II.

That the District Court erred in holding that at the times mentioned in the complaint herein the greater part of appellant's servicing was not, and is not, in intrastate commerce. [38]

III.

That the District Court erred in holding that appellees were not employed by appellant to render services in a service establishment and in holding that appellees did not render services in a service establishment the greater part of whose servicing was or is in intrastate commerce, within the meaning of Section 13 of the Fair Labor Standards Act of 1938. (29 U. S. C. A., Sec. 213(a)(2).)

IV.

That the District Court erred in holding that the wage and hour provisions of the Fair Labor Standards Act of 1938 (29 U. S. C. A., Secs. 206 and 207) apply to appellant under the facts of this case.

V.

That the District Court erred in holding that appellant was not, and is not, exempt from the application of the wage and hour provisions of the Fair Labor Standards Act of 1938 (29 U. S. C. A., Secs. 206 and 207) by reason of the exemption provisions of Section 13 of said Act. (29 U. S. C. A., Sec. 213(a)(2).)

VI.

That the District Court erred in holding that appellant violated the provisions of Section 16 of the Fair Labor

Standards Act of 1938 (29 U. S. C. A., Sec. 216) and in holding that by reason thereof appellant was, and is, liable to appellees for overtime wages or compensation, for liquidated damages in an equal amount, and for attorneys' fees for appellees' attorneys.

VII.

That the District Court erred in holding that the appellees, when employees of appellant and at the times mentioned in the complaint herein, did not devote a substantial portion of their time, respectively, to the performance of duties and work involving safety of operations of a private motor carrier in interstate commerce.

VIII.

That the District Court erred in holding that the appellees, [39] at the times mentioned in the complaint, were not engaged for a substantial portion of their time in performing the duties and work and at occupations necessary to the transportation of goods in interstate commerce, and in holding that appellees were not within the classes of employees as to whom the Interstate Commerce Commission has the power to establish qualifications and maximum hours of service pursuant to the provisions of the Motor Carrier Act of 1935. (49 U. S. C. A., Sec. 304.)

IX.

That the District Court erred in holding that appellant was not exempt from liability under the wage and hour

provisions of the Fair Labor Standards Act of 1938 by reason of Section 13(b)(1) thereof (29 U. S. C. A., Sec. 213(b)(1)), providing that the wage and hour provisions of said Act are not applicable to any employee with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service as provided in 49 U. S. C. A., Sec. 304(a).

X.

That the District Court erred in giving judgment to the appellees, and each of them, in the amounts, respectively, specified in the judgment.

XI.

That the District Court erred in overruling appellant's motion for a new trial, and to vacate judgment and conclusions and to amend findings of fact.

Dated this 23rd day of April, 1947.

JOHN W. PRESTON and
PRENTISS MOORE

By John W. Preston

Attorneys for Defendant and Appellant [40]

Received copy of the within this 23 day of April, 1947.
Herbert V. Walker.

[Endorsed]: Filed Apr. 28, 1947. [41]

[Title of District Court and Cause]

STIPULATION RE EXHIBITS

It Is Hereby Stipulated by and between the respondents and appellant herein, acting through their respective counsel, that the above entitled Court may, if so advised, make its order herein that the original exhibits admitted in evidence in said action on the trial thereof, may be sent to the Appellate Court by the Clerk of this Court in lieu of copies thereof and that said Clerk be required to take such steps as seem advisable to him for the safekeeping, transportation and return of said exhibits.

Dated this 23rd day of April, 1947.

HERBERT V. WALKER and
CHARLES BEARDSLEY

By Herbert V. Walker
Attorneys for Plaintiff and Respondent

JOHN W. PRESTON and
PRENTISS MOORE

By John W. Preston
Attorneys for Defendant and Appellant

[Endorsed]: Filed May 6, 1947. [48]

[Title of District Court and Cause]

ORDER RE EXHIBITS

On stipulation of the parties hereto and good cause appearing therefor,

It Is Hereby Ordered that the original exhibits admitted in evidence on the trial of the above entitled action may, in lieu of copies thereof, be transmitted by the Clerk of this Court to the Circuit Court of Appeals, Ninth Circuit, and to that end said Clerk may take such steps for the safekeeping, transportation and return of said original exhibits as to him may be deemed proper.

Dated this 6 day of April, 1947.

J. F. T. O'CONNOR

Judge

[Endorsed]: Filed May 6, 1947. [49]

[Title of District Court and Cause]

CERTIFICATE OF CLERK

I, Edmund L. Smith, Clerk of the District Court of the United States for the Southern District of California, do hereby certify that the foregoing pages numbered from 1 to 49 inclusive contain full, true and correct copies of Amended Complaint; Amended Answer; Findings of Fact and Conclusions of Law; Judgment; Motion for New Trial; Minute Order Entered December 31, 1946; Notice of Appeal; Order Extending Time for Filing and Docketing Record on Appeal; Statement of Points Upon Which Appellant Intends to Rely; Appellant's Designation of Contents of Record on Appeal; Appellee's Designation of Additional Contents of Record on Appeal; Stipulation re Exhibits and Order re Exhibits which, together with Original Plaintiffs' Exhibits 1 and 2 and Original Defendant's Exhibits B, C, D, E, G, H, I, J, K, L, M, N and R and copy of four volumes of Reporter's Transcript, transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that my fees for preparing, comparing, correcting and certifying the foregoing record amount to \$11.80 which sum has been paid to me by appellant.

Witness my hand and the seal of said District Court this 20 day of May, A. D. 1947.

(Seal)

EDMUND L. SMITH,
Clerk,

By Theodore Hocke,
Chief Deputy Clerk.

[Title of District Court and Cause]

Honorable J. F. T. O'Connor, Judge Presiding

REPORTER'S TRANSCRIPT OF PROCEEDINGS
Los Angeles, California

Wednesday, October 23, 1946

Appearances:

For the Plaintiff: Herbert V. Walker, Esq., and Charles Beardsley, Esq.

For above Defendant: Prentiss Moore, Esq.

For United Van and Storage Assoc. and California Van and Storage Assoc., as amicus curiae: Wyman C. Knapp, Esq.

* * * * *

Mr. Beardsley: * * * I would like at this time to move the court for authority to amend the complaint to correctly set forth the names of these plaintiffs.

The Court: The motion will be granted.

Mr. Beardsley: The name, if the court please, of "Louis Kanik"—these, in general, are in alphabetical order—it should be "Kanir" rather than "Kanik", "K-a-n-i-r" instead of "K-a-n-i-k". And similarly, the name "Holden" in the complaint, it should be "Ira C. Holder", "H-o-l-d-e-r"; and the name "Emery Keyes", "K-e-y-e-s", should be "Emery Key", striking off the "e-s-"; and the name which we have listed "Mable Furhite"—that is under the "F's" in the complaint, should be "Noble F. White," "N-o-b-l-e", initial "F. W-h-i-t-e"; [4*] and the name in the first one of the group of plain-

*Page number appearing at top of page of Original Reporter's Transcript.

tiffs added in the caption of the amended complaint, "Emery Kelly" should be stricken out. That was an error from reading the name "Emery Key" which was so written that we made that mistake.

I ask leave of the court to have that amendment made on the complaint.

Mr. Moore: What was the last one, Mr. Reporter?

Mr. Beardsley: "Emery Kelly" stricken out. It refers to the same one as "Emery Key."

Mr. Moore: "Emery Kelly" is the same?

Mr. Beardsley: Yes. So just strike out "Emery Kelly." There is no such person that we know about.

I have prepared a very brief trial memorandum which I should like to submit to the court. And, if the court please, I think that in a very brief opening statement it might be possible, with Mr. Moore's cooperation, to narrow the issues somewhat.

As your Honor knows, this is a complaint brought under the Fair Labor Standards Act for overtime alleged to be due these various plaintiffs. As stated in the little memorandum which I have handed to the court, we do not claim that they were not paid time and a half for hours more than eight hours in any particular day that they worked.

The overtime compensation which we are seeking is for hours worked beyond 40 hours in any work week, and it is our [5] contention that the practice was that the defendant worked its employees a 48-hour week, that is, an eight-hour day on Saturdays. Many of the men worked additional hours on various days, including Saturdays, but when they worked more than eight hours in a day they were paid overtime on that basis.

When your Honor referred to the bill of particulars yesterday I had in mind the request we made of the company that it make up from its records a statement as to the dates of the employment of each of the plaintiffs of the hours they worked in each week and so on. That information was supplied to us informally. It has not been filed with the court, but it shows generally that the men worked 44 hours a week; in other words, that there were four hours of time which was not compensated at the time and a half rate. [6]

* * * * *

Mr. Moore: * * * It is our offer at this time in view of that to suggest to the court that if the court feels that any period of time it would like to take as a test, the defendant will offer the court the privilege of designating the referee or taking the facts and figures of the auditor and manager of the local concern, that is. the Coast Van Line, which has attempted to research this problem. And we have one very detailed method which we took which we felt was the worst from the standpoint of the defendant's position, and have broken that down in detail to indicate all types of operations that were carried on.

The amount of time consumed will run approximately 100 to 150 hours for each month, with the service of about four people, to make a month by month analysis of these to determine each of the factors involved.

But the company takes the position that if the court cares to indicate what it should like to do in the matter, they will undertake the expense or, if you prefer, to have the plaintiffs join with them in providing whatever period of time the court needs. [13]

* * * * *

ESTEL C. JAMISON,

called as a witness by plaintiffs, being first sworn, was examined and testified as follows: [33]

* * * * *

Direct Examination

By Mr. Beardsley:

Q. Mr. Jamison, what is your present residence address? A. 11005 Buford Avenue, Lennox.

Q. That is in Los Angeles County?

A. Yes, sir.

Q. Were you at some time associated with the defendant in this case, Coast Van Lines, Incorporated?

A. Yes; I was the first vice-president of the Coast Van Lines.

Q. Were you a stockholder for a time?

A. A stockholder; yes, sir.

Q. Did you take some active part in the business as an employee?

A. Yes; as warehouse superintendent and timekeeper.

Q. And what was the period of your connection with the company?

A. Well, from '41 to '45, March the 15th of '45. [34].

* * * * *

Q. By Mr. Beardsley: Mr. Jamison, do you know whether any of the work of the company during the period you were there had to do with the Navy contract for the packing, crating, and shipping of Naval personnel goods?

A. Yes; it did.

Q. Can you say approximately what proportion of the work of the company was on that?

Mr. Moore: The same objection, calling for a conclusion of this witness and not the best evidence. [36]

(Testimony of Estel C. Jamison)

The Court: Overruled.

A. Well, for different years, of course, it varied as to the different amount of time spent on the contract. At times, why, I would say it was as high as 60 per cent of it.

The Court: Give us the others. You just gave us one figure, 60 per cent.

The Witness: Well, it ran all the way from 50 to 60 per cent, I would say.

Q. By Mr. Beardsley: In your work as warehouse foreman will you tell us just what operations of the company you had under your immediate supervision?

A. All the storage of the household goods.

Q. Was the crating or packing under your supervision immediately? A. No, sir; it was not.

Q. Mr. Jamison, while your immediate duties as warehouse foreman did not involve supervision of other activities of the company, did you as vice-president of the company have knowledge of the general method in which this Navy contract work was done? A. Yes.

Q. You do have that knowledge as an officer of this company? A. Yes, sir.

Q. Can you describe to us what that work was, that is, did employees of the company go to the persons' homes and pack [37] their goods and so on? Just tell us what was done.

A. Well, packers were sent to the homes to pack their dishes and bric-a-brac, clothing, linens, and those things; and the trucks were dispatched to bring them into the packing shed, and the packing crews packed and crated those things that were to be packed and crated for ship-

(Testimony of Estel C. Jamison)

ment; and if they were to be shipped, they were shipped on out by rail; if not, they went to storage.

Q. Was there a converse operation as to goods coming into this area of Naval personnel? Did you have anything to do with those?

A. Yes. We had deliveries brought from both the Naval supply depot and forwarding companies.

Q. Would they be similar goods, household goods of Naval personnel?

A. Goods coming in, yes, would be taken out and uncrated and put back into the homes.

Q. That is, goods coming in from other states?

A. Yes.

Q. You spoke of shipping out. Would that be shipping out into other states than California?

A. Yes.

Q. Did the company also handle other freight, other than household goods of Naval personnel?

A. No; purely in the line of household goods. [38]

Mr. Beardsley: That is all. You may cross examine.

The Court: And were these goods and personal articles picked up at the house; picked up and put into a van, were they?

The Witness: Yes; a moving van.

The Court: And where did that van travel to?

The Witness: Well, for two years we had our packing plant in the Long Beach area. They were carted to the Long Beach area and then they were later carted to the Los Angeles area during the latter years.

The Court: From what points? Where were these houses or homes from which the goods were taken?

(Testimony of Estel C. Jamison)

The Witness: A certain area in Los Angeles, practically all of Los Angeles County and some of Orange County.

The Court: And none of it was actually taken out of the state?

The Witness: No.

The Court: All right; proceed.

Mr. Beardsley: You may cross examine.

Cross Examination

By Mr. Moore:

Q. Mr. Jamison, in the last four months of 1942, September, October, November, and December of '42, what percentage of the time of the firm was spent on the Navy contract that you speak of in the moving of household goods? [39]

A. Oh, I would say about 60 per cent of it.

Q. Now, taking the first six months of the year 1943, what per cent of the time of your firm was spent on the moving of Naval personnel's household goods?

A. I would say about 60 per cent during that time.

Q. That is, from January to June of 1943?

A. Yes.

Q. And from June to—

The Court: The last six months?

Q. By Mr. Moore: From June to December of 1943 what percentage of time? A. About 60 per cent.

Q. And from January of 1944 to June of 1944 what percentage of time was spent on Navy contract work?

A. About 55 per cent.

(Testimony of Estel C. Jamison)

Q. And from June to December of 1944 what percentage of the time of the Coast Van Lines was spent on moving household effects of Navy personnel?

A. About 60 per cent.

Q. You left the firm when?

A. In March of '45.

Q. In March of '45. From a period of January to March, 1945 what per cent of the firm's time was spent handling Navy personnel goods?

A. About 50 per cent. [40]

Q. From what records or information have you drawn these conclusions, Mr. Jamison?

A. From the waybills and time cards.

Q. All right. Taking their waybills, what records did you keep of the waybills?

A. Well, we had a file of waybills that showed what moved in the Navy and what moved as individuals.

Q. Do you have those in your possession?

A. They were available for my immediate inspection.

Q. Did you ever take the waybills for the period, say, of January to July, 1944, and analyze the percentage of waybills which were under Navy contract or under any other type of business?

A. No, sir; I never did.

Q. So that you have no independent knowledge from an examination of the records yourself, is that correct?

A. Just by my general knowledge of what was done.

Q. Just a conclusion on your part, is that right?

A. That is right.

Q. Where was your place of business during this time as a warehouse superintendent?

A. 819 Maple Avenue and East Third.

(Testimony of Estel C. Jamison)

Q. I am sorry. I did not hear the first one.

A. 819 Maple Avenue and 423 East Third Street.

Q. Do you know the destination of any of the goods which your firm serviced? [41]

A. Yes; I have seen innumerable bills of lading that stated the destinations.

The Court: What were the destinations? That is what counsel asked.

A. Well, Washington, D. C.; there has been innumerable shipments there. Seattle, Washington.

Q. By Mr. Moore: California?

A. Yes; there has been made to California, as well, San Francisco.

Q. A great deal of the Naval personnel moved between Alameda and San Diego and Los Angeles, isn't that correct? A. No; I wouldn't say that.

Q. Well, you don't know, do you, what the destinations were or—

A. Various destinations would be all that I would be able to say; yes, sir.

Q. And these men who, you described, went out and packed up these household goods might one day work upon the goods which moved to Washington, D. C., or might work upon goods which moved to Alameda, California the same week? A. That is right [42]

* * * * *

HENRY C. RETZER,

called as a witness by plaintiffs, being first sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Henry C. Retzer.

Direct Examination

By Mr. Beardsley:

Q. What is your present residence address, Mr. Retzer?

A. 6103 West Drexel Avenue, Los Angeles 36.

Q. What is your business or occupation; that is, in what line of business are you engaged?

A. At the present time?

Q. Yes.

A. I am extension counsellor for a Teamster International of St. Louis.

Q. Have you been engaged in the van and storage business some part of your lifetime?

A. Some 29 years.

Q. Have you been active in the association of that [43] business?

A. I was president of United Van and Storage Association for two terms.

Q. Were you at any time connected with the defendant, Coast Van Lines?

A. That is correct.

Q. What was the period of your connection?

A. Well, I have worked for them years back. I would not recall the years. In San Francisco, and then after I moved to Los Angeles in 1943 I returned to their employ in San Francisco as sales manager for them.

(Testimony of Henry C. Retzer)

Q. When, if at all, did you work for them in Los Angeles?

A. When they purchased the Coast Van Lines I was transferred to Los Angeles.

Q. And that was in what month, do you recall?

A. I believe September or October of '43—'44.

Q. For how long a time did you work with Coast Van Lines here in Los Angeles?

A. Until the end of May, '45.

Q. What was the nature of your work there during that period?

A. I originally started handling sales and then my position was changed to one of manager of operations.

Q. And for how long a period did you hold that last position, manager of operations? [44]

A. I would say the last six months of my employment there or seven months.

Q. In your work as manager of sales or handling sales in the earlier part of your connection with the company here in Los Angeles what was the general nature of your duties?

A. Estimating and soliciting business for the company.

Q. And in the latter part, when you were manager of operations, just what was the general nature of your work?

A. I had charge of all departmental heads in the operating end of the business, the employment of labor and discharge of labor.

Q. Were you a stockholder or officer of the company?

A. No, sir.

(Testimony of Henry C. Retzer)

Q. Did you have an opportunity to observe what, if any, proportion of the company's work had to do with the Navy contract, moving?

A. I did not have access to actual records or contracts, other than the performance of the work. I knew that the major performance of their operation was Navy.

Mr. Moore: Just a moment. I object to the last as volunteered and not within the question asked, and ask it be stricken.

The Court: Yes; I think that is correct. Strike it out.

Q. By Mr. Beardsley: What proportion of the operations of the company were in the Navy contract, moving? [45]

Mr. Moore: Just a moment. Calling for a conclusion of the witness. He testified it was not within his knowledge and he did not have any contact with the records at all.

The Court: Well, that would not be the records. In other words, if a man saw five vans coming from San Pedro to here, it would not make any difference what the records were. I assume that is what the evidence is.

Mr. Beardsley: He said he was manager of operations and had—

The Court: Proceed.

A. Well, in my opinion, I think that Mr. Jamison was conservative when he said 60 per cent. I would say in excess of 60 per cent, from my observation.

Q. By Mr. Beardsley: Do you know from your own observation what proportion of that material or those goods was going in interstate commerce, that is, between states, as distinguished from within California?

(Testimony of Henry C. Retzer)

Mr. Moore: Just a moment. Again, calling for a conclusion of this witness; no record of best evidence before this court, no proper foundation laid for his testimony.

The Court: I think a better foundation should be laid. It is just a question right out of the air to this witness.

Q. By Mr. Beardsley: As manager of operations did you observe from what points and to what points shipments were traveling? [46]

A. Not the actual shipping. I had no part of the actual shipping.

The Court: No; that is not the question. Read the question.

(Question read by the reporter.)

A. No; I did not. That I did not have access to.

The Court: No. That is not the question.

The Witness: I mean the points that they were shipping to, Judge, your Honor.

The Court: You said you did not have access to it.

The Witness: To the bills of lading that would bear that information.

The Court: All right.

The Witness: Do you see what I mean?

The Court: Yes. The question is answered.

Q. By Mr. Beardsley: Do you know whether or not goods were being crated and packed for shipment outside California? I am asking whether you knew.

A. I do, from the stencil marks on the crates.

Q. Did you see the goods moving, then, and see the places to which they were marked?

A. That is correct. The stencil marks on the crates I did see.

(Testimony of Henry C. Retzer)

Q. Would you tell us what proportion of the goods were traveling or were stencilled to travel in interstate commerce? [47]

Mr. Moore: Object to the question. The witness has testified that he had no knowledge of that information.

The Court: No. The witness just testified that he saw marked in stencils on the crates where these boxes were to be shipped. Now, that is the best evidence.

Mr. Moore: I believe the question in this case was directed toward the percentage, your Honor.

The Court: Read the question.

(Question read by the reporter.)

The Court: Can you answer that yes or no?

The Witness: I can, sir.

The Court: All right.

The Witness: In my opinion, about 75 per cent.

The Court: Of what?

The Witness: Was out of the state.

The Court: Does that just refer to the Navy goods or does that refer to the general business of the corporation?

The Witness: That refers to the Navy goods.

The Court: All right.

Q. By Mr. Beardsley: Did some of the other goods handled by the corporation during this period, that is, other than Navy contract handling, travel in interstate commerce? I am asking you to base your answer on what you observed of the markings of the goods.

A. I would have to go into a little detail to explain [48] that.

The Court: Go ahead.

A. In many instances where various officers of the Navy would be placed in this area and, of their own

(Testimony of Henry C. Retzer)

choosing, wished to transfer at their own expense, in those cases they would ship their own goods out of the state. In those instances I have seen a fair percentage of them.

Q. By Mr. Beardsley: Those instances you now refer to were outside of the Navy contract work?

A. That is correct. I would say probably 40 per cent of those.

Q. 40 per cent of those outside the 75 per cent of those inside of the Navy contract?

A. I would think that.

Q. Can you answer this question from your knowledge of the business and your experiences as manager of operations? Was there a substantial amount of business of this company being carried on which did not affect either Naval freight or Navy contract jobs or private jobs for Naval personnel, as you have just stated?

A. Not substantially; no, sir.

Mr. Moore: May I have the answer, Mr. Reporter?
(Answer read by the reporter.)

Q. By Mr. Beardsley: Putting it another way, most of the work that was done was either on Navy contract or for Naval [49] personnel, is that correct?

A. That is correct.

Q. Can you describe just what was done under your supervision when you were manager of operations about these goods which were picked up and handled under the Navy contract for Naval personnel? Can you tell just what operations were performed by the company and its various employees?

A. My principal duty was on performance of the actual work, to see that the work would be done as quickly

(Testimony of Henry C. Retzer)

as possible and with as little overhead as possible. I did come in contact with the actual labor situation through observance of time cards, and my office adjoined the dispatching office where all the dispatching was taken care of. I don't know that that answers your question. Principally, you asked me what my duties were.

Q. No. I want to know whether, by reason of your duties, you know just what this company did when it moved a man's goods.

A. How they performed the service?

Q. Yes; that is right.

A. Packers were sent to the homes to pack the loose and breakable articles, articles that could not be transported without packing. After they completed their packing, sometimes on the same day and sometimes on the following day, a truck would be dispatched to pick the goods up and bring them into the warehouse or whatever the disposition would be in accordance [50] with that particular job. If it would be held in storage until further disposition was ordered, then it would be placed in storage. If it were to be packed for shipment, it would be placed in the packer room. If it was a van line order going to any point within the state, they would then load it on the van and a van line driver would take that to San Francisco or whatever the point would be.

Q. All right. Now let me take these operations separately. The first operation was that men would go out to the house and pack the china and loose things?

A. That is correct.

Q. Would those men go out there in a truck?

A. No. They were packers.

(Testimony of Henry C. Retzer)

Q. How would they go out there?

A. They would use a truck in which they loaded their material to take it on the job; yes, sir.

Q. If there was a freight shipment there would they actually be the persons who brought it back in?

A. In some instances they were used for that purpose and in some instances they were not.

Q. Were they the same persons who would haul it on a van line between cities?

A. No; the line drivers had nothing to do with it, The only thing the line drivers would do, if they would pack where packers were not accessible to that point, they would [51] bring the goods into the warehouse.

The Court: Where was the warehouse located?

The Witness: On 423 East Third; and then they had a warehouse on Maple, and they had one on Margo.

The Court: Where were they officing?

The Witness: On Third Street.

The Court: Where you were operating?

The Witness: That is correct.

The Court: Any other office in this state?

The Witness: No other office in this state to my knowledge other than the firm itself had an establishment in San Francisco known as the Market Street Van and Storage.

Q. By Mr. Beardsley: When goods were shipped outside of the State of California where were they put on some interstate carrier, at what place?

A. They were loaded off their loading platform into freight cars.

Q. Where was that, at which of these warehouses?

A. At Third Street.

(Testimony of Henry C. Retzer)

Q. At Third Street?

A. That is where the railroad siding was.

Q. Did the employees of this company actually board the cars and put the furniture in?

A. They braced it and everything, packed it for shipment.

Q. Did they put it in the cars? [52]

A. Loaded it in the cars and braced it.

Q. Do you know whether there was the converse of that operation going on with goods coming into this area from outside the state?

A. Yes; some came in by motor truck and some came in by freight.

Q. What would the employees of this company do with that type of merchandise coming in from outside of the state?

A. That was placed in storage, held for disposition of the owner of the goods, or whatever the disposition might be. If an address was available at the time the goods were received, then they were delivered to the individual at the residence, uncrated and placed in the house. If there was no disposition at the time the goods arrived, then they were placed in storage and held for future disposition.

Q. Did the employees of this company, then, where there was an address available, take the goods there and uncrate the goods? A. That is correct.

Q. Do you know from your work there, your responsibility there, Mr. Retzer, what proportion of the time of the men who were packers, who went out, as you have described, to these locations and packed the goods, what proportion of their time was spent in driving or

(Testimony of Henry C. Retzer)

trucking, and what proportion in the operations of packing? [53]

A. Well, packers were employed as packers. The only occasions they had to travel by truck was a means of transportation to and from their job.

Mr. Moore: I am going to object to that as being a conclusion of the witness and not responsive to the question.

Mr. Beardsley: I think that the answer, perhaps, is not completely responsive, but it was coming out. I think it is matter which should be in the record.

The Court: Ask him again.

(Question read by the reporter.)

The Court: Now, you must answer that, first, yes or no.

A. Yes, sir.

Mr. Beardsley: Wait, now.

Q. Will you tell us what the proportions were?

A. 90 per cent of the time packing and about 10 per cent driving.

Q. By Mr. Beardsley: In your former answer which was stricken, you started to explain to us how the packers used a truck, to what extent their truck was used by them. Will you tell us what that is?

A. Packers had small, bob-tailed trucks, as they called them, on which they hauled their packing materials such as barrels, boxes, excelsior, paper and so on to the job, which also enabled them to bring unused material back in the same unit. [54]

Mr. Beardsley: You may cross examine.

(Testimony of Henry C. Retzer)

Cross Examination

By Mr. Moore:

Q. When did you say your employment terminated, Mr. Retzer, with Coast Van?

A. I believe it was May, 1945.

Q. Is it Retzer, R-e-t-z-e-r?

A. That is correct.

Q. It terminated in May of '45?

A. That is correct. I am quite positive it was May, the end of May or beginning of June.

Q. The office records and files were kept in a different part of the building from where you operated as a dispatcher or handling the operations or estimator, whatever it is you did, on the lower floor, isn't that correct?

A. My office was on the lower floor. At first, my office was at Margo until the building was completed at Third Street which was under reconstruction due to a fire.

Q. And for compilation of the records of the company what access did you have to them?

A. If I wanted any access, I could have had access to them. I had no occasion to.

Q. If you had no occasion to, you had no access.

The Court: No; he did not say he did not have access. [55] He said he did not have occasion to have access.

Q. By Mr. Moore: But the answer is that you never did examine the records of the business done by the company over, let us say, a weekly or a monthly or a six months' period, is that correct?

A. I had no reason to examine them.

(Testimony of Henry C. Retzer)

Q. Well, your answer is that you did not?

The Court: He said he did not. He said he had access but he did not have occasion.

Mr. Moore: As I understand him, he said he had no reason to.

The Court: Well, all right. If he did not have any reason to, he did not do it.

Q. By Mr. Moore: When you said the Navy operations were in excess of 60 per cent what period of time did you mean for that to cover?

A. The end of the year in 1944, when I took over operations, which was possibly the month of November. I would not have those dates, didn't feel the need of bringing that information with me. However, I can provide it through pay vouchers from the end of November until my termination there.

The Court: November of what year?

The Witness: November of 1941.

The Court: To May, 1945?

The Witness: That is correct. [56]

The Court: All right.

Q. By Mr. Moore: As I understand it, you gave us that from November, 1944 until the termination of your service?

A. That is correct.

Q. Was the period you speak of in which the Navy operation or the Navy contract operations of the company were in excess of 60 per cent of the work?

A. That is correct.

Q. Did you make any estimation for the period from September, 1943 up to November of '44?

A. September, 1943 I was in San Francisco.

The Court: In San Francisco?

(Testimony of Henry C. Retzer)

The Witness: Yes, sir.

Q. By Mr. Moore: When did you come to Los Angeles? A. September, 1944.

Q. What were those estimates, or what records, rather, were those estimates based on that you have just given us of 60 per cent? A. Observation.

Q. Don't you know it to be a fact that almost three to two of the operations of the company in that period covered business other than the Navy contract?

The Court: I will permit that to be asked, but it is argumentative, counsel. Answer it if you can.

The Witness: I don't understand the question at all. [57]

Mr. Moore: Withdraw the question.

Q. What facts were your observations based on?

A. Experience.

The Court: He is giving these as estimates.

The Witness: On experience.

The Court: All right.

Q. By Mr. Moore: Just giving these estimates?

A. On experience I have and knowledge.

Q. Experience of what?

A. Of my knowledge of the business and observation of the—I certainly would not have been placed in the position of manager—

The Court: No, no. Strike that out. That is not responsive to counsel's question.

The Witness: I didn't understand his question.

The Court: Just a moment. We will have it read. It is very clear.

(Testimony of Henry C. Retzer)

(Question read by the reporter.)

A. What were those based on? Actual existing facts, is about the only way I can answer it.

Q. By Mr. Moore: What were those facts?

The Court: Counsel means did you just see these and note them in your memory or record?

The Witness: I answered that, your Honor, as observations, before. [58]

The Court: And "observation" is a very general term. Counsel is asking you, properly, for some more specific details.

The Witness: I see.

The Court: Of just how you get such a figure.

The Witness: Could you enlighten me as to what the procedure would be to define that particular thing? When you say "facts", could you define what you mean by "facts" in this particular instance?

Q. By Mr. Moore: I am asking you, Mr. Retzer, to tell us what facts you base your conclusion upon that the Navy contract from November, 1944 to the time you left in May of 1945 consumed 60 per cent of the operations of the Coast Van Line's business.

A. Actual facts with my contact with the departments that were handling the work.

Q. Did you ever make a compilation of the records of the warehouse department to determine that?

A. They had an accounting department for that purpose. That was not part of my duties.

Q. Did you ever make— A. I did not; no.

Q. Did you ever make a compilation of the records of packing and crating? A. Cost is all.

(Testimony of Henry C. Retzer)

Q. Did you ever make a compilation of the records of [59] the packing and crating department?

A. No, sir.

Q. To know what part of it was done in the Navy contract or in other business?

A. I did not as a comparison; no.

Q. Did you ever make an examination of the records of the transportation to determine what part of it was Navy or otherwise?

A. I told you before I had no occasion to examine records.

Q. Did you ever make an examination of the records to determine what per cent of the business done other than Navy flowed intra or interstate commerce?

A. I had no occasion to. There was no request for it in my duties.

Q. Upon what facts did you make your estimation of the 40 per cent of all other business outside of the Navy contract was interstate commerce?

A. Actually through observation, as I said, in seeing the markings on shipments and consignments and their destinations—observation.

Q. Did you ever operate as the dispatcher, or did you ever stand on the dock during the course of most of the days and see everything that flowed in and out?

A. Yes; I did. My office was right adjoining the [60] dispatcher's office.

Q. And you examined most of the crates that came and went out, and observed their destinations and made your estimation upon that information?

A. That is correct.

(Testimony of Henry C. Retzer)

Q. What was the tonnage of goods that were hauled between Los Angeles and San Francisco by Coast Van Lines; or, we will put it another way: What percentage of the total transportation during the month of November, 1944 was shipped between Los Angeles and San Francisco?

A. That would reflect itself on their records, which, as I tell you, I did not refer to.

Q. I mean from the same observation you have made of the destinations that these things went to, I want you to estimate for us the percentage of the business that was carried between Los Angeles and San Francisco.

A. The business was divisional. Now, what business have you reference to, the general public or the Navy?

Q. I mean all business that was done by the firm in the month of November, 1944, what percentage of it would you estimate flowed between Los Angeles and San Francisco?

A. Oh, I would say you could divide it in half, 50-50.

Q. 50-50?

A. 50 per cent highway, 50 per cent—

Q. 50 per cent of the business done was carried between [61] Los Angeles and San Francisco during the month of November, 1944?

A. Not necessarily San Francisco. I would not select San Francisco as the terminal point, because the goods were shipped to all parts of California, various towns, intermediate places.

Q. I am asking you now just with the same observation. You observed these other things.

A. If it is San Francisco, I would say 20 per cent of it.

(Testimony of Henry C. Retzer)

Q. Just a moment. Let me finish my question, please. What percentage of the transportation hauled during the month of November, 1944 was hauled between Los Angeles and San Francisco?

The Court: The witness answered that he estimated 20 per cent, counsel. That is of the total, not limited to just the Navy, is that it?

Mr. Moore: Of the total business done.

The Court: All right.

Mr. Moore: 20 per cent was hauled by vans?

A. That is my estimation.

Q. What per cent went to other northern points of California outside of San Francisco?

A. To be honest with you, that invites guessing. I would not like to guess. I can provide that information, however. I do not like to testify on a guess basis. I like to [62] testify as nearly as I know. I wouldn't have any idea, but it reflects itself.

Q. Mr. Retzer, do you have substantiation of these facts you have testified to today?

A. A lot of that was internal, when I told you on crates my time was confined inside.

The Court: Now, you have not answered counsel. Read counsel's question.

(Question read by the reporter.)

A. What I have testified to today I can substantiate; yes, sir.

Q. By Mr. Moore: Do you have it by a written document? A. No, sir.

(Testimony of Henry C. Retzer)

Q. What type of substantiation have you?

A. The various men who were in charge of the various departments in their particular lines of duty have, and they have substantiated it.

Q. I see. But not of your own knowledge do you know any of the facts or figure which you have given today?

A. Purely from observation, as I have stated before.

Mr. Moore: I move to strike the witness' testimony in whole as to any information given—

Mr. Beardsley: Oh, well.

Mr. Moore: —as based on hearsay, and coming from these other witnesses. [63]

The Court: Denied. It goes to the weight of the testimony.

Q. By Mr. Moore: A driver taking a truck out to pack goods at a residence, who goes to—I think you described Orange County, is it, where you did some of your business?

A. I did not specify Orange County. Mr. Jamison mentioned Orange County.

Q. Oh, Mr. Jamison. A man going to San Fernando Valley to pack 200 pounds of goods would take a pickup truck and a helper and go with his packing equipment to that address, is that correct?

A. That is correct, or whatever truck would be available.

Q. Yes. He would pack and crate the bric-a-brac, the small articles, and after packing it he would put the

(Testimony of Henry C. Retzer)

200 pounds on the pickup and he and the driver would return to the warehouse with it, is that correct?

A. If it were a small consignment, as you were referring to, 200 pounds it would naturally be the justifiable thing to do. It would not be to send another truck out to pick it up. If it was four or five thousand pounds, a separate unit is sent out to pick it up.

Q. How much time, from your experience, would it take, Mr. Retzer, to go to Van Nuys, pack 200 pounds, and driving time consumed between Van Nuys and the warehouse each way? What time would it take to do the actual packing and what time [64] would it take to do the actual driving?

A. It is an unfair question, because how much are you asking me in regard to how much must be packed, what quantity?

Q. I said 200 pounds.

A. 200 pounds. That would only be two barrels of china.

Q. All right. How long would that take to pack?

A. Three to three and one-half hours, for shipping.

Q. Three to three and one-half hours for 200 pounds?

A. That is correct.

Q. Now then, how long would it take—

A. That is for a slow packer.

Q. And what for an ordinary packer?

A. Two and one-half hours.

Q. Two and one-half hours?

A. That is right.

Q. How long would it take that driver and helper to drive from the warehouse on Third Street to an address in the center of Van Nuys?

(Testimony of Henry C. Retzer)

Mr. Beardsley: Oh, that is objected to as clearly speculative.

The Court: Yes, counsel; that is highly improper. It kind of depends on the time of the day, if he is going at a time when there is little or no traffic, or if he is going at a time when traffic is congested, or if he is going at a [65] time when there is an average flow.

Q. By Mr. Moore: What is the average length of time during daylight hours that it would take your driver to drive to Van Nuys?

The Court: It is immaterial. Exception allowed to the defendant.

Q. By Mr. Moore: Well, upon what information, Mr. Retzer, do you base your conclusion that 90 per cent of the time taken is spent packing and 10 per cent of it driving?

A. That is correct. A packer was employed as a packer, not as a driver.

The Court: Now, you did not answer counsel's question.

The Witness: That is what he was employed for and that is all that he did.

The Court: No. That is not answering counsel's question.

The Witness: On what do I base the fact?

The Court: Read the question.

(Question read by the reporter.)

A. The man was directly under my employ. Would that be sufficient?

Mr. Moore: May I have the last answer, please?

The Witness: You asked what I base that on.

(Testimony of Henry C. Retzer)

The Court: Wait a minute. Counsel asked to have the question read.

(Answer read by the reporter.) [66]

Q. By Mr. Moore: All right. Now, he was directly under your employ. And from what facts, figures and other information did you arrive at this conclusion that packers spent 90 per cent of their time packing and 10 per cent of their time driving? In other words, from an examination of waybills, from an examination of—

A. Oh, I see. What type of records were evidence to that effect? Packing slips. They had a packer's slips that accompanied the packer to the packing job. In other words, on that he would list the amount of material he used, the number of hours that he had packed on the job. That is the evidence that exists for that time. It was from those records, which I had access to them and they went through my hands before they went into the office.

Q. How many packers did you have?

A. It varied, depending with the amount of business at the time. I would say from seven to any number, 10, 11, 12. Some were temporarily employed to take care of a rush situation and they were discharged after the rush.

Q. Did you ever have a packer make a freight delivery on his way to do a little packing job?

Mr. Beardsley: Oh, that is objected to as not material.

A. Not to my knowledge.

The Court: Oh, I will allow the answer.

A. Not to my knowledge. [67]

(Testimony of Henry C. Retzer)

Q. By Mr. Moore: Did you say that your duties included that of an estimator?

A. That was my first duty, as I explained to you.

Q. What are the duties of an estimator?

The Court: I do not suppose that is material. It is what he did as an estimator, counsel. Is that what you want?

Mr. Moore: Yes.

Q. What did you do as an estimator?

The Court: What did you do?

A. At various instances where they had requested an estimate as to the cost of their service, I would make a survey of their furnishings in the home and determine an approximate estimate as to their cost of packing, transportation, or whatever the case may be. If it was a van line shipment, then it was the packing plus the van line shipment. If it were a crating job, it was the preliminary packing and their crating, all based on the ultimate certified weight at the conclusion of the packing.

Q. By Mr. Moore: Anything else?

A. That was an estimator's duty, and, of course, to secure the order.

Q. Did you ever suggest how various articles should be packed?

A. We did the packing. We did not ask the customer to do the packing. [68]

Q. Did you ever recommend wardrobe service?

A. Wardrobe service is the service that I am the father of 20 years ago.

Q. And I assume you recommended that?

A. Definitely.

(Testimony of Henry C. Retzer)

Q. Did you ever suggest the service of a plumber in disconnecting the sewage?

A. If the question were asked and they didn't have ways and means of disconnecting the stuff, we recommended a plumber for them.

Q. Did you ever suggest the advisability of making a change of address on their insurance or for their papers to be forwarded?

A. If they were storing their household effects, they were advised to transfer their insurance to the warehouse; yes, sir.

Q. Did you ever advise the purchasing of moving insurance? A. I recommended it.

Q. You did that with anybody you went out to see, didn't you?

Mr. Beardsley: Just a moment. I do not think this is material or proper cross examination.

The Court: I will permit it to go in for what it is worth. [69]

The Witness: What was the question again, please?
(Question read by the reporter.)

A. Not for a local move from one house to another. On that occasion I didn't recommend insurance. But if it were going any distance, I did.

Q. By Mr. Moore: Did you recommend the treating of rugs? A. That is correct.

Q. And other articles for preservation against moths?

A. That is the usual precaution in the industry.

Mr. Moore: That is all.

(Testimony of Henry C. Retzer)

Redirect Examination

By Mr. Beardsley:

Q. Mr. Retzer, you stated that you have been 29 years or you were 29 years in this business, is that correct?

A. That is correct.

Q. Were some of these estimates of proportion of time that a packer spent in packing and driving based upon your experience in the industry?

A. That is correct.

Q. As well as observing particular bills on particular jobs?

A. That is right.

Mr. Beardsley: That is all, I think. [70]

* * * * *

ERNEST R. FARMER,

called as a witness by plaintiffs, being first sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Ernest R. Farmer.

Direct Examination

By Mr. Beardsley:

Q. What is your present residence address, Mr. Farmer?

A. 949 North Spaulding.

Q. Is that in Los Angeles?

A. Yes.

The Court: Beverly Hills, isn't it?

The Witness: No, sir.

Q. By Mr. Beardsley: Beverly Hills?

A. Los Angeles.

Q. Los Angeles. What is your business or occupation? [71]

A. I am a truck driver at present.

(Testimony of Ernest R. Farmer)

Q. Were you at sometime connected with Coast Van Lines, defendant in this action? A. Yes, sir.

Q. During between approximately what dates were you employed there?

A. From December, '43 to about July of this year, '46.

Q. And in what capacity were you employed?

A. As a dispatcher and assistant dispatcher and warehouse manager.

Q. And at what plant or location of the business were you employed, Mr. Farmer?

A. As a dispatcher, 819 Maple; as a warehouse manager at 423 East Third Street.

Q. Would you describe what your duties were as a dispatcher, just what you did?

A. Well, I had to dispatch all trucks to their duties.

Q. Were you familiar with the nature of the material which they picked up and brought into the warehouse?

A. Yes, sir.

Q. And did you have knowledge of the destinations to which it was eventually to go, whether within the state or outside the state? A. Yes, sir.

Q. Did you know whether or not the work which was being [72] handled was Navy contract or private work?

A. Yes, sir.

Q. During the period that you were so employed, the dates you have given, can you tell us approximately what percentage of the work was Navy contract work?

A. 75 per cent.

Mr. Moore: Objected to for the same reason, calling for a conclusion of the witness, not the best evidence, and

(Testimony of Ernest R. Farmer)

not the proper foundation laid as to the man's knowledge of records or that he kept them.

The Court: I understand that the records were burned. If you have the records, we will ask you to produce them.

Mr. Moore: What period will you say this witness' testimony is expected to cover?

Mr. Beardsley: He testified from December, 1943 to July, 1946.

Q. What proportion of the material was traveling outside the state as between this state and other states as distinguished from within California?

A. I would say 70 out of the state and 30 in the state.

The Court: 70 per cent of the total business of this company was sent out of the state and 30 within the state?

The Witness: Yes, sir.

Q. By Mr. Beardsley: During this time did you have anything to do with shipments of material which came from [73] elsewhere, came from other states into your place here in Los Angeles and were sent out locally?

A. Oh, yes, sir.

Q. Was there some considerable amount of that sort of business which originated outside of California, things shipped in here for Navy personnel?

A. Quite a bit. [74]

* * * * *

Q. By Mr. Beardsley: In your work as dispatcher, Mr. Farmer, were you the person who would send out packers with a small truck to do packing work?

A. Yes, sir.

Q. Will you describe just what was done in that regard? I want to know now about approximately the

(Testimony of Ernest R. Farmer)

proportion of time of those men which was spent in driving trucks.

Mr. Moore: Your Honor, I am going to object to leading questions that counsel continues to ask the witness on direct examination, to produce a desired effect, whatever it is he wants, but I do not think it is proper. I am going to object [76] at this time.

Mr. Beardsley: Oh, I submit it is not a leading question.

The Court: Repeat the question, please.

(Question read by the reporter.)

The Court: What part of it is leading, counsel? A leading question suggests the answer of the witness. If there is anything in this question that suggests the answer, whether it is one per cent or 90, I do not see it. What part of it is leading?

Mr. Moore: The leading part is the specification of what is wanted. I mean this man can describe whatever operation he wants.

The Court: Suppose counsel does not want him to tell about the hours the men came to work in the morning. The witness must be given an idea of what he should answer, and I do not know of any other way to present it than counsel has. He directs his attention to what he wants and does not suggest the answer, which is always the objectionable part of a leading question. This witness can say one per cent or 99 per cent. The court does not know. Answer the question if you can.

A. 90 per cent packing and 10 per cent driving.

Q. By Mr. Beardsley: And did those men who did packing, who went out with the small truck and materials,

(Testimony of Ernest R. Farmer)

do any line driving, that is, driving vans between cities or on regular routes? [77] A. No, sir.

Q. About how many line drivers were there employed by this company during the time you were there, that is, at any time? What I want to get at is not the total number of employees you had during this period, but the number of drivers you had all the time driving the line, as you call it. A. From one to three.

Q. Will you define that term? Is that a term you use in your industry, "line drivers"? A. Yes, sir.

Q. What do you mean by that?

A. That means out of the city.

The Court: That is not clear. Read the question, and listen to the question now, Mr. Witness, and see if you can answer it.

(Question read by the reporter.)

A. A "line driver" is a driver employed to haul goods from one city to another.

Q. By Mr. Beardsley: Is he a driver who keeps a log of his hours at the wheel and so on?

A. Well, if he is going from state to state he keeps a log. I do not believe it is required in the state.

Q. These men who went out and picked up a small shipment or picked up goods at a house and brought them into the warehouse, did they keep logs? [78]

A. No, sir; not what we call "logs". They kept records of what they did and those hours for the day.

Q. Were those records kept for cost accounting purposes? A. I think so.

Mr. Beardsley: That is all. Cross examine.

(Testimony of Ernest R. Farmer)

Cross Examination

By Mr. Moore:

Q. Do you know Mr. Magnus?

A. Mr. Magnus. Yes, sir.

Q. What usual duties did he perform?

A. Mostly as a house packer.

Q. Did he ever do any line driving?

A. I think he did; yes, sir.

Q. Then, what you say is not true in all cases, that packers did not do any line driving?

A. Oh, no; certainly not. He might pack something, but the next year he might be a line driver.

Q. Maybe I misunderstood you. I thought you said a packer never did any line driving?

A. No. I meant while he was employed as a packer. Of course, there is exceptions, but that is not his duty. I was a packer and now I am a line driver.

Q. Is it your opinion, Mr. Farmer, that out of each day's operation a man who was engaged in the work of a packer [79] spent approximately seven and one-half hours packing and 30 minutes driving?

A. It averaged pretty close to that; yes, sir.

Mr. Moore: That is all.

* * * * *

BERT ARMSTRONG,

a plaintiff herein, called as a witness for plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Bert Armstrong.

The Clerk: B-u-r-t?

The Witness: B-e-r-t.

Direct Examination

By Mr. Beardsley:

Q. Mr. Armstrong, what is your present residence address? A. 1406 West Olympic, Los Angeles.

Q. Were you at sometime employed by Coast Van Lines, Inc., the defendant here? A. I was. [80]

* * * * *

Q. In what capacity were you employed?

A. Furniture crater.

Q. And where, at what location, at what business places? A. Well, Maple Avenue and Third Street.

Q. During all of that time were you employed as a crater? A. Yes, sir.

Q. Will you describe just what your work was, what duties you performed as a crater?

A. Well, when the goods were brought into the warehouse I was one of the men that crated them for shipping.

Q. Nailed them up in wooden containers, is that it?

A. Yes, sir; crated them and packed them.

Q. Did you have anything to do with marking them to indicate their destination?

A. No; I didn't have anything to do with that. That was done in another department.

Q. Did you see them after they had been marked?

A. Oh, yes. [81]

(Testimony of Bert Armstrong)

Q. Do you know to what destinations the goods were going which you crated?

A. Well, here is the way that came about: You see, we would be called upon lots of times to load cars. Naturally, we would segregate the lots and we will put them in cars according to destination.

Q. Was there any difference in the manner in which you crated goods for shipment by rail or for other shipments or for storage?

A. For storage—well, they were all shipped. They were all crated to be shipped ultimately, even if they went to storage temporarily.

Q. Do you know what proportion of the goods on which you worked were goods which were to be shipped outside of California, as distinguished from shipments within California?

A. Well, the fact is that the goods that were delivered locally we did not have much to do with; they did not require crating, you understand.

Q. They did not come into your department at all?

A. No, sir.

Q. What proportion, then, of the goods which did come into your department on which you worked and crated moved in interstate commerce outside of California?

A. Well, I would say all of them. [82]

* * * * *

Cross Examination

By Mr. Moore:

Q. Mr. Armstrong, you did not as a crater have many opportunities to see where the shipments were going, did you? [84]

A. Just as I repeated, when we had cars; yes.

(Testimony of Bert Armstrong)

Q. You did not get a chance to load a car very often, did you? A. Oh, yes; quite often.

Q. How often? A. Well, those—

Q. Once a week, once a day, once a month?

A. It averaged—well, we will say once a week. We will put it that way.

Q. That would be either loading it on a van or would be loading it on a car?

A. Freight car, a railroad car.

Q. A freight car. But you always loaded them onto a freight car; you never loaded any onto vans?

A. No. [85]

* * * * * * * *

Q. By Mr. Moore: Mr. Armstrong, did you ever crate and pack a shipment destined to the Navy supply officer at San Francisco or Vallejo?

A. (Witness nodding.)

Mr. Moore: I don't think the reporter can get the nod of your head. A. No, sir; I never did.

Q. Did you ever crate any article in the seven years you were there—

The Witness: Now, I will have to—

The Court: Wait, wait. You have not heard the question.

Q. By Mr. Moore: —destined somewhere within the State of California?

The Witness: Well. I beg your pardon. I did not hear the first question. I thought you asked me if I ever crated any for San Francisco. [86]

Mr. Moore: No.

The Witness: Well, then, I answered that wrong.

(Testimony of Bert Armstrong)

The Court: Just a moment, just a moment. Strike out the last two questions and answers, and let us have the record correct. Mr. Moore, ask the question.

The Witness: Yes; I did.

The Court: Now, just a moment.

Q. By Mr. Moore: While you were employed as a crater at the warehouse on East Third Street for Coast Van Lines did you ever crate and mark a shipment for the San Francisco Navy supply office or the Vallejo Navy supply office?

The Witness: The question was: Did I ever crate and mark?

Q. Yes. A. No, sir; I never did.

Q. Did you ever do any marking at all?

A. There is the point I am answering. I never done the marking.

Q. All right. Did you ever crate anything which had a tag on it destined for San Francisco Naval supply office?

A. Oh, I suppose so, yes; many times, I guess.

Q. In how many cases would you say you had crated something destined for San Francisco Naval Supply Office? A. That is very hard to estimate.

The Court: Well, as nearly as you can. You said that [87] you did, and just give us now your best recollection. Once a week?

The Witness: Well, your Honor, over a period of three years you run into those things once in a great while, you know.

The Court: I know it is very difficult.

The Witness: I can answer that this way: If it was shipped by truck, the answer is "no"; if shipped by rail, the answer possibly "yes".

(Testimony of Bert Armstrong)

Q. By Mr. Moore: How many times have you crated for rail shipments, the objects or the boxes designated "San Francisco"?

A. That would be better answered by trying to estimate how many shipments were made in that direction, because I usually got in on all of them.

The Court: Will you answer the counsel's question approximately, one a week or twice a week?

The Witness: Well, your Honor, there would be weeks there would be a lot of that stuff, and there would be weeks and weeks there would not be any of it in that direction, you know.

The Court: All right; that answers the question. Proceed, Mr. Moore.

Q. By Mr. Moore: How did you load these cars, Mr. Armstrong?

A. Well, we put the goods in them, stack them up and [88] brace them.

Q. Who would do that besides yourself, the other crater?

A. Well, we would have a couple of helpers. The crating department. Bricker was one of them, Chapel was one of them.

Q. And you would put it in, brace it and fill up the car?

A. Yes.

Q. You saw to it that the load did not shift within the car and made it safe to move it on the railroad?

A. That was part of the job; yes, part of the job.

(Testimony of Bert Armstrong)

Q. To the best of your recollection, did any of the cars that you ever loaded have a destination other than outside the state?

A. Oh, yes. We loaded them for practically every Naval base in America.

Q. Did you ever load any cars with a destination inside the state?

A. I don't remember of it, because, as I said, in the first place if we had a local shipment, it was very seldom put in a freight car. If it was a small lot, it would be a full lot to be dumped off some place.

Mr. Moore: That is all. [89]

* * * * *

EMORY KEY,

a plaintiff herein, called as a witness by plaintiffs, being first duly sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Emory Key.

Direct Examination

By Mr. Beardsley:

Q. What is your residence address, Mr. Key?

A. 831 Maple Avenue.

Q. Los Angeles? A. Yes.

Q. Have you been employed by the Coast Van Lines, Inc., the defendant here? A. That is right. [103]

* * * * *

Q. What was your classification or in what capacity were you employed there when you first went to work?

A. Well, when I first went to work, I went to work as a warehouseman.

(Testimony of Emory Key)

* * * * *

Q. What were you doing then?

A. I was packing and driving. [104]

* * * * *

Q. By Mr. Beardsley: Now, you say in the first period mentioned you worked as a warehouseman; then after March 1st, 1944 you were a packer and driver?

A. That is right.

Q. Did you change your occupation after that or have you been packer and driver continuously?

A. I have been that continuously.

Q. What sort of equipment did you drive?

A. I drive a semi.

Q. How long have you done that; since about what date? A. Well, I would say about a year.

Q. From about October, 1945?

A. That is about right.

Q. Prior to that what were you doing?

A. I was driving a bobtail.

Q. During what period were you doing that?

A. Pardon me?

Q. How long before October, 1945 were you driving the bobtail?

A. I was driving the bobtail from the time I started drawing 95 cents an hour.

Q. That is March 1st, 1944?

A. Yes. I was driving the bobtail until I started driving that semi.

(Testimony of Emory Key)

Q. Taking the first period, when you were a warehouse- [107] man, will you tell us just what your duties were, what you did?

A. My duties were to take care of furniture that was brought in to be stored.

Q. Was that crated or loose furniture or what?

A. Well, it was both.

Q. Some of it crated for shipment and some of it brought in without crates, is that correct?

A. That is right.

Q. Do you have any knowledge of what proportion, what percentage of the furniture was in shipment, in the course of shipment, and what percentage of it was just local storage? Do you know at all?

A. No. The only thing is, see, I take care of the warehouse. I mean I was only the helper. I was not a warehouseman. I only just worked there in the warehouse, and all I know is the stuff come in that had to be stored, we stored it, put it in storage, and the stuff that didn't have to be stored was crated in the other room as long as the crating room was there at Maple. It was crated and shipped, and where it went I don't know.

Q. That is the period from January 26th to March 1st. After March 1st until October, that is, March 1, 1944 until October, 1945, when you were driving the bobtail, you were packer and driver then? [108]

A. That is right.

Q. Just tell us what you did in that capacity?

A. Well, I would receive the orders that morning. Whatever material had to be used on the Navy job—it was all Navy, practically everything was Navy—and I received orders for how many barrels and how many

(Testimony of Emory Key)

boxes I needed. I would take my truck, load the material on, go out to the house, pack up all the stuff, load it into the truck and bring it back to the warehouse.

Q. Do you know what proportion of your time was spent in driving as distinguished from packing or loading and unloading?

A. Well, that is according to how far you had to go. For instance, if it was right around close to the warehouse, there wasn't very much time spent in driving. If it was farther out in town, Beverly Hills, something like that, there was more time spent driving.

Q. Is it possible for you to estimate the percentage you spent in each of those activities, driving and packing?

A. Well, I would say all day, going out on a packing job—of course, sometimes we would have three or four different packing jobs to go on—I would say all day, driving would be possibly, the driving part, would amount to two and a half hours or maybe three; the rest of it packing. [109]

* * * * *

Q. When you were operating, driving a semi—that is a semi-trailer, is that what that means?

A. Yes, sir.

Q. That was the period of the last year?

A. Yes, sir.

Q. Just describe your duties there.

A. The same duties.

Q. Were you packing? A. Yes, sir.

Q. Bringing goods into the warehouse?

A. Yes, sir. [110]

Q. Were you not driving between cities or on regular routes? A. No.

(Testimony of Emory Key)

Q. You were not?

A. Not between cities; no, sir.

Q. Well, were you what is called a line driver at any time?

A. No, sir.

Q. In other words, it is the same work you were doing before, only you are using a different type of truck, is that it?

A. Yes, sir.

Q. Was there some difference in the type of jobs that you used your semi on? Are they different from the type jobs you used the bobtail truck on, larger or smaller?

A. Well, the only thing is just more work on the semi. That is the only difference. They would hold more.

Q. Would they be bigger jobs, bigger shipments?

A. Bigger shipments; that is right.

Q. What would be the ratio between the driving time and the packing time on the bigger shipments?

A. Well, there is more packing on the bigger shipments than there is on the smaller shipments.

Q. So your percentage of packing time against driving time would be larger on the semi-trailer? [111]

A. That is right. It would be the packing; it would be more packing than it would driving. [112]

* * * * *

Cross Examination

By Mr. Moore:

Q. Mr. Key, your work from March, 1944 until October, 1945 remained fairly consistent, did it? [113]

A. Yes, sir.

Q. What percentage of the time would you estimate in the month of June, 1945, or, preferably, July, 1945,

(Testimony of Emory Key)

did you engage in packing and crating as compared with the time spent in driving?

A. What proportion would I say was packing?

Q. Yes; packing as compared with the time that you spent driving?

A. Well, I will say the biggest portion of it.

Q. The biggest portion is which?

A. I would say 75 per cent.

The Court: Packing?

The Witness: Packing and loading.

The Court: Yes. All right.

Q. By Mr. Moore: No. I mean just packing now, not loading.

A. You mean just packing barrels and boxes?

Q. Just packing barrels and boxes or packing anything.

A. "Packing" means packing into the truck, too, you know, because you have to take the stuff.

Q. I am not talking about loading anything into the trucks. I am talking about going into the house. The understanding I have of your definition is that you pack at the house of a person whose goods were being shipped.

A. That is right. [114]

Q. What percentage of your time did you spend in the month of July, 1945, in packing?

The Court: I suppose that he may refer to his records there and show, may he, counsel? Would not that be the best method for him to answer that question? Examine your records and take out the July statements.

Mr. Moore: No; I don't think there is any record in there of the classification of his duties.

The Witness: In June, 1944?

(Testimony of Emory Key)

The Court: 1945.

Mr. Moore: July, 1945.

The Witness: July, 1945.

Mr. Moore: There is no reference on the records.

The Court: Is there any reference on the records that would indicate that?

The Witness: Indicate how much packing I did?

The Court: Yes.

The Witness: No, sir.

The Court: All right. Answer the question, if you can. We have had no recess this afternoon, gentlemen. We will take a recess until 9:30 tomorrow morning.

(Whereupon, a recess was taken until 9:30 a. m., of the following day, Thursday, October 24, 1946.) [115]

* * * * *

The Court: You might make a statement now, gentlemen, so we have the record clear, on just where we are in the case.

* * * * *

Mr. Beardsley: Subject to the complete cross examination of this witness so that he will not have to return, counsel on each side have agreed that we will arrive at an average stipulated number of hours per week for which the overtime pay is to be paid during all of the time that each of the plaintiffs-employees are employed, subject, of course, to the determination as to whether or not they are entitled to receive such overtime pay. The purpose of that is to eliminate the requirement that we go into records and detailed proof man by man by all of the

(Testimony of Emory Key)

plaintiffs, showing exactly what hours were worked in each work week and what Saturdays were worked during each work week of the time each plaintiff was employed.

It is our belief that, by striking this average, a fair result will be arrived at for each side and a very large amount of the court's time will be saved. [118]

* * * * *

The number of hours we settled upon in this matter of arriving at an average was five and one-half hours per week per man for each week between the date of his beginning and ending employment.

Mr. Moore: Do you want to offer that now in the form of a brief stipulation?

Mr. Beardsley: Yes. That is, I will stipulate that is the settlement we are trying to arrive at and that your auditor is going to prepare a sheet which will show those amounts computed for that period of employment.

Mr. Moore: Will it be necessary to have a written stipulation?

Mr. Beardsley: Oh, yes; I think we should have a written stipulation setting forth the hours and amount for each man, which I think your auditor will be able to prepare. [119]

* * * * *

Does that correctly state our understanding, Mr. Moore?

Mr. Moore: Yes. Thank you, Mr. Beardsley.

The Court: It will be so understood.

Q. By Mr. Moore: Mr. Key, I believe our last question yesterday before we adjourned was an approximation by you of the time that you spent in doing various types

(Testimony of Emory Key)

of operation. As I recall, you mentioned 75 per cent for loading and packing. A. That is right.

Q. The last question—and I will ask you again this morning—is what per cent of your time you considered you did in loading?

A. Well, I would say about 20 per cent loading.

Q. That would include, also, loading and unloading?

A. That is right.

Q. What per cent of your time do you think that you spent driving?

A. Well, as I told you yesterday, it would be according to how far I drove, see. Say, for instance, if it was 10 miles out with a truck, it would be longer than if it was just right around close to the warehouse, which, as a rule, a lot of times we did get stuff right around the warehouse. So I [120] would say possibly 10 per cent driving would be close enough.

Q. 10 per cent driving? A. That is right.

Q. As a fair average, you mean, of your time?

A. Yes; that is right.

Q. What per cent of your time did you act as a driver's helper?

A. Well, I was not a driver's helper. I didn't ever get paid driver's helper's wages. I was classified as a "driver" from the time I left the warehouse, which was—I don't recall. Yesterday I had it right down.

Q. Disregarding the pay you received, in your operations did you ever act under the classification known as a driver's helper; in other words, somebody else drove the

(Testimony of Emory Key)

truck and you went along with him and you were then known as the driver's helper?

A. No; they didn't never classify me as a driver's helper, although I have went along and the other man drove the truck; but that was at all times, because there is always two men on the truck and both of them can drive.

Q. You both can drive? A. That is right.

Q. You consider yourselves both driving, or is the one who sits behind the wheel the driver and the one on the righthand side of the cab the driver's helper? [121]

A. Well, the one under the wheel is considered the driver.

Q. What does the driver's helper do to assist you when you are driving?

A. Well, it is according to if you have got a street that you don't know where it is at, he can take the guide, the Gillespie Guide, and look up the street and tell you, and save time getting to the place. He looks up the street and tells you right where the street is.

Q. If you are on a crowded street, directs you into parking the truck? A. I didn't get that.

Q. I say, if you are in a crowded street does he get out and help you in parking your truck?

A. That is right.

Q. Getting in and out? A. That is right.

Q. Does he keep a lookout at railroad crossings and places of hazard that you are passing?

A. That is right.

Q. Does he flag down traffic if you have to turn around on the highway and make a U-turn or have some

(Testimony of Emory Key)

other occasion to do something that requires holding up traffic? Does he assist you doing that?

A. Yes; if you should do that. You are not supposed to [122] turn around in the middle of a highway, anyway.

Q. Surely.

A. So I have never had that occasion.

Q. Does he put out flares when you have an accident or come to rest somewhere, and go back and watch the automobile traffic?

A. Well, I have never had that occasion. I have never had to have flares put out.

Q. Does he help you change tires when you have tire trouble? A. I never had any tire trouble.

Q. Does he ever help you in going for assistance when you need assistance? Say your truck has had a minor breakdown, does he go and get the help while you stay and guard the truck or vice versa?

A. Well, now, that—I have had a breakdown once or twice since I have been there, and that is just according. Maybe you are close to a station; you just go call the mechanic up. He always comes right out and fixes the truck.

Q. But one of you stays by the truck while the other goes and makes the call? A. That is right.

Q. Is that the procedure, or does the driver's helper do that and the driver stay with the truck?

A. No; the driver's helper would stay with the truck. [123]

Q. If you have any minor repairs to make on the truck so that you keep it running, the carburetor flooded or the battery terminal jar is loose, or anything that you

(Testimony of Emory Key)

consider a minor repair, does the driver and helper make those?

A. Well, we don't—well, I have never had occasion, myself, because the trucks are always in good shape. Otherwise they probably would not send them out. But I have never had any occasion to work on the truck.

Q. What per cent of your time would you estimate on the average that you spend packing?

A. Packing?

Q. Yes.

A. Well, I would say between 65 and 70 per cent.

Q. 65 and 70 per cent? A. That is right.

Q. What is that operation? When you speak of packing, packing 65 and 70 per cent, what do you mean by that term?

A. That is packing barrels, boxes, cartons, wardrobes, any kind of clothing or dishes, bric-a-brac, stemware, or miscellaneous stuff.

Q. Well, the fancy items that belong to the housewife, that she wants it carefully packed?

A. That is right.

Q. To move her to some other place. You put them in barrels and boxes, wrap them and give her little personal [124] attention and service those articles that you pack out at the household? A. That is right.

Q. Take your packing materials, stuffing or excelsior and the barrels out and do it right there?

A. That is right.

Q. What else do you do besides that in a packing operation? A. Besides packing?

(Testimony of Emory Key)

Q. I say, is there anything else to a packing operation besides that?

A. No; not household packing. That is all you do; you pack either barrels or boxes or cartons.

Q. Mr. Key, would you say that the month of July, 1945 was an average month's operation for you?

A. Well, I wouldn't say that. That I couldn't. I couldn't say that, because there is days that you work until 10:00 o'clock at night, and then maybe the next day you work until just 4.30. But I wouldn't be able to answer that question.

Q. To put it another way: Would the type of operation that you performed, such as your loading and packing and driving be fairly consistent throughout the months at the same average which you have given us, say, during the year 1945? [125]

A. Well, I wouldn't know that, either, because all I know is that a person, you just get your orders and you go to work, and whatever you have to do you do. And so I wouldn't know which month would make the most, because I didn't take care of that part of it, see.

Q. All right. Are there any months that you think that your operation which you describe to us would not approximate 20 per cent for loading and 10 per cent for driving and 65 or 70 per cent for packing in the year 1945?

A. No. I believe they would all go that far.

Q. Do you think in the month of July, 1945 that those averages would also hold true?

Mr. Beardsley: Just a moment. I object to that on the ground he has already been asked and has answered that he doesn't know how to answer that question.

(Testimony of Emory Key)

The Court: See if you can answer it any differently.

A. I have already said I couldn't tell you; so that is all I can say.

Q. By Mr. Moore: All right. Is there anything that you think of or that you recall now that might have been unusual in your operations during the month of July, 1945? A. Unusual?

Q. Yes. I mean was it a usual month, as you reflect over the month of July, 1945? Did you do about the same thing that month as you did in June or August of the same year? [126]

Mr. Beardsley: The same objection.

The Court: He has answered that twice, gentlemen.

A. I don't know.

The Court: Just a moment. He has answered that twice, counsel.

Q. By Mr. Moore: Is it your best recollection, Mr. Key, that the month of July was or was not an average month's work?

Mr. Beardsley: That is objected to. The same question in another form.

The Court: That is that same question, counsel. He has answered it several times.

Q. By Mr. Moore: Mr. Key, I show you waybill of the Coast Van Lines No. 5375; it bears date of 7-17-45; and ask you if that is your signature which appears at the bottom of the sheet?

A. No; it sure is not.

Q. Under the word "driver"?

A. That is right.

Q. That is not your signature?

A. That is right. That is not, either.

(Testimony of Emory Key)

Q. I show you No. 5378. I show you signature which appears to be the word "key" and ask you if that is your signature?

A. No; it is not my signature. It sure is not. [127]

Q. Is that not all put on there by you?

A. No; it is not.

Q. Do you know who put that on there?

A. No; I sure don't.

Q. Do you know the man named White who appears there in the next line? A. That is right.

Q. Do you recognize that?

The Court: He has not answered your question. Repeat the question.

(Question read by the reporter.)

The Court: Do you know the man?

The Witness: That is right.

The Court: Do you know him?

The Witness: Yes, sir.

The Court: Very well.

Q. By Mr. Moore: Do you know his signature?

A. No, sir.

Q. In the 17th or 16th day of July did you go to the Fidelity Van and Storage?

The Court: What year, what year?

Mr. Moore: Pardon me. 7-16-1945, appearing on this bill of lading, 1945, as indicated on the waybill 5378, to Fidelity Van and Storage, and pick up some material and carry it somewhere? [128]

A. Well, I will tell you now. This could be wrote on there, my name and White's name, easy enough, because I couldn't say whether I did or not. That is a long ways back. That is going a long ways back for me to remem-

(Testimony of Emory Key)

ber a certain place that I went to. So I couldn't say whether I did or not.

Q. You have no independent recollection of having done that on that day? A. That is right.

Q. Mr. Key, I show you a Coast Van Lines waybill No. 5493. Have you ever seen that document before? Any of your handwriting on it?

A. Yes; I believe this is my handwriting right here.

Q. Indicating the portion under "Van Service"?

A. Well, no. You got two, three barrels here packed.

Q. Is this your handwriting?

A. No. But that is the boss' handwriting. That is the dispatcher's handwriting.

Q. The portion which is your handwriting comes within the black line? A. That is right.

Q. Under the caption of "Van Service" consisting of many columns? A. That is right.

Q. Any other handwriting of yours on this document?

A. Yes. Right here is my handwriting. [129]

Q. Indicating what? Can you read that to us?

A. 2 barrels and 3 boxes; 30 pounds of shredded paper; 10 pounds of craft paper; and 20 pounds of news.

Q. All right. Do you recall the day of July 24, 1945, when you went to the Rosenberg home and picked up this order which is described here?

A. No, sir; I sure don't. I couldn't remember that, because I have had too many of these things. I couldn't remember that particular one.

Q. I will ask you if the information which you indicated was in your handwriting is correct information?

A. Now, listen. Let me explain something to you here. In this reading "9:30 to 10:30", that loading and

(Testimony of Emory Key)

this driving and all comes under the packing, too, because the company charges for packing extra. So that you can't go by that, not as far as loading is concerned, because all the company know that that goes in there, see, and you couldn't go by that loading time.

Q. I asked you if the item which says "loading time started 9:30-time complete 10:30" was put in there by you? A. That is right; it was.

Q. And then a further extension of time consumed or "time for computation of charges" one hour; the next column, "running time (round trip) 10:30"—what is that, 1:15 or 2:15? [130] A. "11:15."

Q. "11:15 one hour and one-half."

A. Well, that is doubled. You can see for yourself there from 10:30 to 11:15 is not an hour and a half. So that is double. You see, the company doubles all driving time. That is where your driving time comes in at.

Q. Yes. You had two men working, which you had here "No. of men" under this first column, is that right?

A. That is right.

Q. Now, "unloading 8:30"— A. Until 9:00.

Q. "Time started 8:30, time completed 9:00 o'clock" and extension "one-half hour"?

A. That is right.

Q. That is all in your handwriting?

A. That is right.

Q. Under the item farther down the page, I believe you stated that was all in your handwriting under the heading "materials"? A. That is right.

Q. What do the extensions beyond those represent, to the left of the writing, "2 barrels"?

A. Two barrels \$3.00.

(Testimony of Emory Key)

Q. What does that mean?

A. That means that is what they charged the customer [131] for two barrels, a dollar and a half apiece.

Q. That is just for the raw barrels?

A. That is just for the raw barrel; that is right.

Q. Two boxes?

A. Two boxes is—someone has changed that. It has been changed. I put it "\$2.00" and someone has made it \$4.50." So I don't know who has made it "4.50". That is not my writing.

Q. And the next one "30"—

A. Pounds of shredded paper "1.50".

Q. 20—

A. 10 pounds of craft. That is \$2.00. 20 pounds of news 1.20.

Q. What do you mean by 20 pounds of news?

A. That is shredded paper, cut newspaper.

Q. Then you have under the next heading "Material Sales Tax 2½%" and beneath that "crating and packing" and the figure "2". Is that your handwriting?

A. No; it is not. It sure isn't.

Q. Is the figure "crating and packing 2" and then the—

A. No, sir; none of this isn't my handwriting at all. None of that.

Q. And this extension beyond it is a different handwriting than this, is it?

A. This writing here and this. I believe, is the same.

Q. Indicating the line just referred to, which you did [132] not sign, and what other line?

A. This. See, I didn't sign that. I didn't sign that, and I don't think I signed that.

(Testimony of Emory Key)

Q. All right. A. It don't look like my writing.

Q. And this was not put in by you under the heading of the crating and packing "2 hours 1"?

A. I don't—I wouldn't say for sure on that.

Q. You do not recall, then, this occasion when you went to the Rosenberg place and did this particular job?

Mr. Beardsley: That is objected to as answered.

A. No; I sure don't.

Q. By Mr. Moore: And who signed your name here, do you know, the dispatcher or—

A. It must have been the dispatcher.

Q. Do you recall getting the signature of Mrs. Marie Rosenberg on there? A. No, sir; I sure don't.

Q. I show you Coast Van Lines waybill 5584, dated "7-25-45" and ask you if your signature appears upon the lower right-hand corner of this sheet

A. That is right. That is right.

Q. Under the heading "received payment Driver sign"? A. Yes; that is right.

Q. What does this say in here? Is that in your hand-[133] writing? A. "Cash"; that is right.

Q. "Cash"?

A. "Key". No. Received "cash and check". That was a certified check, I guess, because that is the way we usually put it. "Cash and check," you see, because a certified check is the same as cash.

Q. And then where your name as driver appears in the center of the bottom of the page that is not your signature? A. That is right; it sure isn't.

Q. On the 28th of July did you go to the home of Mrs. J. M. Ennis, or, rather, from the warehouse at 423

(Testimony of Emory Key)

East Third and take to 10530 Butterfield Road the merchandise which was the subject of that waybill?

A. I wouldn't know whether I did or not. It is my writing on here all right.

Q. Well, let us look at your writing under the heading of "Van Service"; the first item says: "loading No. of men 2." Is that your writing? A. That is right.

Q. The next item: "time started 8:30"?

A. "8:30."

Q. Is that your writing? A. That is right.

Q. "Time completed 11:00 o'clock"? [134]

A. That is right.

Q. Is that yours? A. That is right.

Q. "Time for computation of charges hours 2," is that yours?

A. No, sir; it sure isn't. From 8:30 until 11:00 is not two hours, so that is not my writing there.

Q. All right. You say—

A. That is not my writing.

Q. That is not your writing? A. That is right.

Q. Next column: "running time—time started 11:00" is that your writing?

A. I am not sure whether it is or not.

Q. "Time completed 12:30," is that your writing?

A. I don't believe it is. I wouldn't say for sure, but I don't believe it is.

Q. Your helper. Mr. White, is it his writing?

A. I don't know.

Q. You are not familiar with his handwriting?

A. Well, not familiar enough to know whether it is his writing or not.

(Testimony of Emory Key)

Q. "Unloading time-started 12:30-time completed 2:30" is that your handwriting?

A. Well, it has been gone over there so I can't tell.
[135] Someone has gone over it. You can see that.

Q. All right. Next column: "time for computation of charges 2½ hours," is that your writing?

A. I don't believe so.

Q. I will ask you, from an examination of that document, what time did you spend packing or crating on this particular shipment?

A. Well, there is no packing time on this. Well, this was crated. This was all uncrated. We spent, you might say, the whole day uncrating this stuff. This was crated, I am pretty sure.

Q. Does it indicate on the waybill what you did?

A. No, it doesn't indicate, but it indicates, whenever you collect \$249.42 there has got to be something around the furniture.

Q. It came out of the warehouse?

A. That is right. It probably came through from a full car. I wouldn't say because I don't know.

Q. When you do a packing or uncrating job do you have a designation for that on the waybill?

A. No; they don't put that down. They just count it. They charge, but they just count it "unloading."

Q. Oh, I see, "unloading."

The Court: These should all be marked for identification. Every time a witness is testifying from a document, mark it, [136] Mr. Cross.

The Clerk: Yes, your Honor.

The Court: Later, gather up the others, Mr. Moore, and have them marked.

(Testimony of Emory Key)

The Clerk: This will be Defendant's Exhibit A for identification.

Mr. Beardsley: The number of that?

Mr. Moore: May we have this all as part of one exhibit, your Honor?

The Court: Yes.

Mr. Beardsley: Are you going to have it numbered and read?

The Clerk: This is "LA. 4485" and then underneath it in red crayon it has "5402."

The next one will be Defendant's Exhibit B for identification.

The Court: No; they are going to mark them just under the same exhibit, Mr. Cross, and mark them then with 1, 2, 3.

The Clerk: Yes, your Honor. This one I have in my hand will be A-2. The preceding one will be A-1.

Mr. Beardsley: What was the number on Exhibit A-2, Mr. Cross, please?

Mr. Cross: A-2 is marked "LA. 5493."

Mr. Beardsley: Thank you.

Q. By Mr. Moore: I show you Coast Van Lines waybill No. 5574 and ask you if any of your handwriting appears upon [137] that document? A. Yes, sir.

Q. Under the heading "Van Service"?

A. That is right. This, and this, and this, and this, and this.

Mr. Moore: The witness indicating that under the heading of "No. of men," "2," "time started 1:00" o'clock—is that? A. That is right.

Q. "Time completed 3:00" o'clock; "time for computation of charges" "2 hours"; "running time," "time

(Testimony of Emory Key)

started 3:00"; "time completed 3:45"; "1½ hours"; "computation of charges hours and minutes."

The Witness: Do you call it from 3:00 until 3:45 one hour and a half driving?

Mr. Moore: Mr. Key, I am just trying to identify certain portions of the exhibit.

The Witness: That is right, but that don't show. That shows double. In other words, you are making my driving time an hour and a half here when it was only 45 minutes.

Mr. Moore: I am not trying to draw any significance from these documents. That is for the court to do. I am trying to identify these as having been either seen or handled by you at sometime previously, and let the deduction be drawn. If there is any explanation you would like to make about them, I am sure that you can make it. [138]

Q. Do you have any explanation about it? If so, give it to the court now on this item.

A. Well, the driving time is what we were talking about a while ago, wasn't it? Okay. From 3:00 until 3:45 is three-quarters of an hour, isn't it?

Q. That is right.

A. Well, you see, in other words, on this bill here it charges driving time one hour and a half.

Q. Under the item "running time (round trip)"?

A. That is right. But that is not a round trip. It is just one way.

Q. But when you figure both ways, then it is an hour and a half; is that the significance of that?

A. That is right.

(Testimony of Emory Key)

Q. I see. So that your running time is listed as single time and then the extension on that indicates the hours spent by reason of a round trip, is that correct?

A. That is right.

Q. Any other writing of yours on this document?

A. I don't think so.

Q. Well, on the 26th day of July, 1944, did you go to the home of Louis Kanir, 2027 Dunsmuir Avenue, Los Angeles, and pick up five rooms of personal effects?

A. I did.

Q. Do you remember that? [139] A. Yes.

Q. Under your operation that day on this particular job, can you tell us from this waybill what packing you did on that occasion?

A. There wasn't any packing on that occasion at all; no packing.

Q. What did you do, merely driving and loading and unloading? A. That is right.

Q. I show you 5099, Coast Van Lines waybill.

The Clerk: Do you wish this marked?

Mr. Moore: Please, Mr. Clerk.

The Clerk: Defendant's Exhibit A-3 for identification.

Mr. Beardsley: No. 5574?

The Clerk: That is right.

Q. Mr. Moore: Any of your writing on that document, 5099? A. That is right.

Q. Is there or is there not? A. There is.

Q. And which portions are in your handwriting?

A. This right here.

(Testimony of Emory Key)

Q. Indicating under "Van Service," "time started 2:00" is yours?

A. Yes. Don't forget that is packing and loading. You [140] see three barrels here and five boxes, but don't forget that that is packing three barrels and five boxes and loading it from 2:00 o'clock until 5:00.

Q. All right. Directing your attention to the item "packing and crating" is that your writing, "2 hours"?

A. No, sir; it sure isn't. This is.

Q. Is all of this writing in the space under "Van Service" your writing?

A. No; this isn't, and this isn't, and this isn't, and this isn't.

Q. In other words, the extensions under the column "time for computation of charges-hours and minutes" is not yours, but the balance in the box is?

A. This is mine. That "3" I think is mine.

The Court: When you say "this" the record does not show what you are referring to.

Mr. Moore: The witness has just referred now to the first item under "time for computation of charges-hours and minutes" and the extension of "loading 3 hours." You state that is your writing? A. That is right.

Q. And the item beneath that, "running time (round trip) 2 hours" is not your writing; nor is the extension under "unloading 1½ hours" your writing?

A. No, sir; neither one of them. [141]

Q. But the "time started," the "time completed" for the "loading," "running time" and "unloading" are yours, in your handwriting?

A. The "time started" and the "time completed"; that is right; that is mine. And the "running time," the

(Testimony of Emory Key)

"time started," and "time completed" is my handwriting. The rest of them isn't.

Q. The unloading time is not yours?

A. No, sir.

Q. Do you remember a shipment which you picked up from C. G. Duffy on the 12th day of March, 1945 at 1217 South Monterey Street, Alhambra, which consisted of six rooms to be taken to storage? Do you remember doing that job?

A. No; I sure don't. I don't remember it.

Q. Is the hours of time spent in crating and packing as shown as "2" in that particular job correct or incorrect?

Mr. Beardsley: Well, that is objected to. He has testified that he does not remember the job. I do not see how he can answer the question whether the entries are correct if he does not remember the job.

Mr. Moore: I will withdraw the question.

Q. Is it your best recollection that is not your writing of the house consumed in the packing or crating?

A. I just don't know. That is the way I will say it.

Q. You have no recollection, or, rather, I should say, from an examination of this waybill can you determine if you did [142] any packing, other than driving and loading on that job?

A. Can I determine if I did any packing?

Q. From an examination of this waybill.

A. Well, sure. Right here "materials" it shows what was packed and what was not packed. Four barrels, three boxes and 80 pounds of cut paper, 10 pounds of craft, and 20 pounds of news.

(Testimony of Emory Key)

Q. All right. And then the item which follows that: "hours for packing or crating," you did not fill that out?

A. No; I don't think I did. I wouldn't say for sure. I don't know.

The Clerk: The next for identification is Defendant's Exhibit A-4.

Mr. Beardsley: That is No. 5099?

The Clerk: 5099.

Q. By Mr. Moore: I will show you Coast Van Lines waybill No. 4973 and ask you if you have seen this document before?

A. I couldn't say. I don't know because I haven't got a signature or anything on there of mine.

Q. Any handwriting on this yours?

A. No, there sure isn't, not that I see. No.

The Court: All right; proceed with the next question.

Q. By Mr. Moore: I show you Coast Van Lines waybill 5064 and ask you if on the 27th day of July, 1945 you went to the Bekin's Grand Avenue Storage and got 9,500 pounds and [143] delivered it to Commander George Nickel?

A. I don't remember.

Q. I show you Coast Van Lines waybill 5311 and ask you if you have ever seen that document before?

A. No. I just don't remember it, that is all.

Q. Did you ever drive to San Diego, Mr. Key, for the Coast Van Lines?

A. Yes; I drove to San Diego one time.

Q. Does this document refresh your recollection whether that was the trip you made to San Diego?

A. No; it sure doesn't. No; it sure doesn't.

(Testimony of Emory Key)

Q. Where the words "Key" is placed under "pickup and delivery" neither of those are your signatures?

A. No.

Q. I show you Coast Van Lines waybill 4383 and ask you—

Mr. Beardsley: Is that 4383? I am sorry.

Mr. Moore: 4383.

Q. —and ask you if you have ever seen this document before? Let me ask you: is that your signature that appears in the lower right-hand corner?

A. That is right.

Q. Did you place that signature upon that document?

A. That is right.

Q. I ask you if on June 9, 1945 you went to the Margo [144] Warehouse and picked up Job No. 2120 and delivered it to B. J. Wright, 3864 Holly Park Place, Atwater or Glendale, California?

A. Yes; I did, I guess, because it looks like my handwriting there.

Q. What packing or crating did you do in connection with that job?

The Court: Can you answer the question? We are wasting a lot of time.

Mr. Moore: Pardon me. I did not think the witness answered the question.

The Court: No; he has not. I asked the witness to answer it.

A. Well, I don't know whether there is any packing on it or not.

The Court: All right; all right.

A. I don't know.

(Testimony of Emory Key)

Q. By Mr. Moore: I will ask you if you made any entry on this document indicating that you did any packing or crating? A. No.

The Clerk: Defendant's Exhibit A-5 for identification. That is No. 4383.

Q. By Mr. Moore: I show you a Coast Van Lines waybill 5606, dated the 26th day of July, 1945, and ask you if you have ever seen this document before, or is this your signature? [145] A. That is right.

Q. That appears in the lower right-hand corner?

A. It is.

Q. Any other writing upon this page yours?

A. Yes; this is.

Q. Indicating the notations under "Van Service," including that "loading," "running time," and "unloading"?

A. Yes.

Q. Is there any indication on this document that you did any packing in connection with this service?

A. No.

Q. I show you 4971, Coast Van Lines waybill.

The Clerk: May I mark this, please?

Mr. Moore: Please.

The Clerk: This next exhibit will be Defendant's Exhibit A-6, No. 5606.

A. I don't remember that one.

Mr. Moore: Pardon me. Mr. Reporter, the last question I have of the witness was whether he had ever seen the waybill.

Q. I will ask if you have ever seen this document before? Withdraw that. Is there any of your writing upon this document? A. No.

(Testimony of Emory Key)

Q. Where the words "Key" is placed under "pickup and delivery" neither of those are your signatures?

A. No.

Q. I show you Coast Van Lines waybill 4383 and ask you—

Mr. Beardsley: Is that 4383? I am sorry.

Mr. Moore: 4383.

Q. —and ask you if you have ever seen this document before? Let me ask you: is that your signature that appears in the lower right-hand corner?

A. That is right.

Q. Did you place that signature upon that document?

A. That is right.

Q. I ask you if on June 9, 1945 you went to the Margo [144] Warehouse and picked up Job No. 2120 and delivered it to B. J. Wright, 3864 Holly Park Place, Atwater or Glendale, California?

A. Yes; I did, I guess, because it looks like my handwriting there.

Q. What packing or crating did you do in connection with that job?

The Court: Can you answer the question? We are wasting a lot of time.

Mr. Moore: Pardon me. I did not think the witness answered the question.

The Court: No; he has not. I asked the witness to answer it.

A. Well, I don't know whether there is any packing on it or not.

The Court: All right; all right.

A. I don't know.

(Testimony of Emory Key)

Q. By Mr. Moore: I will ask you if you made any entry on this document indicating that you did any packing or crating? A. No.

The Clerk: Defendant's Exhibit A-5 for identification. That is No. 4383.

Q. By Mr. Moore: I show you a Coast Van Lines waybill 5606, dated the 26th day of July, 1945, and ask you if you have ever seen this document before, or is this your signature? [145] A. That is right.

Q. That appears in the lower right-hand corner?

A. It is.

Q. Any other writing upon this page yours?

A. Yes; this is.

Q. Indicating the notations under "Van Service," including that "loading," "running time," and "unloading"?

A. Yes.

Q. Is there any indication on this document that you did any packing in connection with this service?

A. No.

Q. I show you 4971, Coast Van Lines waybill.

The Clerk: May I mark this, please?

Mr. Moore: Please.

The Clerk: This next exhibit will be Defendant's Exhibit A-6, No. 5606.

A. I don't remember that one.

Mr. Moore: Pardon me. Mr. Reporter, the last question I have of the witness was whether he had ever seen the waybill.

Q. I will ask if you have ever seen this document before? Withdraw that. Is there any of your writing upon this document? A. No.

(Testimony of Emory Key)

Q. Did you on the 29th of June take from the Margo Street warehouse of the goods in storage and deliver them to 626 South Spring Street for Holmes and Mower? [146]

A. I don't know whether I did or not.

Q. I show you Coast Van Lines waybill No. 5540 and ask you if any of the writing on that document is yours?

A. Yes.

Q. Does your signature appear anywhere on that document? A. No; it does not.

Q. I will ask you if, in accordance with the information appearing upon this waybill, you recall performing any of the services rendered? Withdraw the question.

The Court: Put a new question, counsel.

Q. By Mr. Moore: What portions are in your writing? A. This right here.

Q. Indicating under "Van Service"?

A. "Packing," "packing."

Q. The word "packing" written in the space where the word "loading" is printed?

A. That is right. "Packing and loading 10:30 to 2:30." That is my writing.

Q. "Number of men" is not yours?

A. Yes; I think that is mine, too.

Q. All right. A. I am not sure.

Q. Anything else on there in your writing?

A. Yes. This is mine down here.

Q. Indicating under the "materials used"? [147]

A. Yes.

(Testimony of Emory Key)

Q. And it is not your writing under the heading of "packing" "2" pounds or "hours 4"?

A. I am not sure about that. I couldn't say, because I am not sure about it.

Q. Do you have any independent recollection of having gone to the home of Commander Booth, 2578 New York Drive, Altadena and bringing to storage the household effects?

A. I sure don't.

Mr. Moore: Does your Honor consider that this has had sufficient identification?

The Clerk: This document, No. L.A. 5540 is Defendant's Exhibit A-7 for identification.

Mr. Moore: In order to save the court's time, may we reserve the right for further cross examination of the plaintiff Key and proceed with other matters at this time in the interest of saving some time?

The Court: Satisfactory.

Mr. Beardsley: Step down, Mr. Key. Do you want Mr. Key to remain in the court room the rest of today, Mr. Moore?

Mr. Moore: No, subject to call.

I understand your Honor is ruling at this time that we will proceed with the service institution showing as defendant's proof out of order?

The Court: Satisfactory. [148]

Mr. Moore: I will call as our first witness Mr. Cummins.

JAMES CUMMINS,

called as a witness by the defendant, being first sworn,
was examined and testified as follows:

The Clerk: Your full name?

The Witness: James Cummins.

The Clerk: Will you spell your last name?

The Witness: C-u-m-m-i-n-s.

Direct Examination

By Mr. Moore:

Q. What is your present address, Mr. Cummins?

A. 1234 Thirteenth Avenue, San Francisco.

Q. Are you connected with the Coast Van Lines, Inc.?

A. Yes; I am, in the capacity of secretary of the corporation.

Q. Is that a California corporation?

A. Yes; it is.

Q. Do you have anything to do with the management of the Coast Van Lines' business? A. Yes.

Q. To what extent are you familiar with the operation of the Coast Van Lines?

A. On an over-all phase of it I am familiar with the [149] financial setup, the sales phase of it, partly with the operations. I am not an expert on them, but I have an idea of the over-all status of the company, possibly, from the sales angle I would be more expert to testify on.

Q. How much of your time do you spend in the business of Coast Van Lines?

A. Oh, to put it down in hours it would be difficult to say. I would say I spend a goodly portion of my time. If I am not working at it in Los Angeles, I devote quite a bit of my time in San Francisco to it.

(Testimony of James Cummins)

Q. Do you have an office of Coast Van Lines in San Francisco? A. Yes; we do have.

Q. Would you say you spend a substantial portion of your time in Los Angeles in connection with the business of Coast Van Lines or estimate the time?

A. You might figure maybe 50-50.

Q. Would you state to the court what the nature of the operations of the Coast Van Lines is in relation to the consumer picture?

Mr. Beardsley: May we have the time fixed? I do not believe the witness has stated when he first became affiliated with the company. Will you fix the time about which he is going to testify?

Q. By Mr. Moore: Before answering the question, Mr. [150] Cummins, when did you become affiliated with Coast Van Lines?

A. Some date in October, 1944. That was where we took in ownership of the company.

Q. And have been since that time?

A. Since that time. If I might mention, for a period of that time we represented the company for a period of four years, to my knowledge, in San Francisco.

The Court: You devote all your time, do you, to the defendant, Coast Van Lines?

The Witness: No, your Honor; about half my time.

The Court: All right, proceed.

Mr. Moore: Would you read the last question, Mr. Reporter?

(Pending question read by the reporter.)

(Testimony of James Cummins)

The Court: What does it do? What is its business? That is the question.

A. Well, our business is almost exclusively devoted to time spent or creating business for people, for individuals, and moving of their household goods and storing of their household goods, the packing and crating of their goods going to any place, going overseas. The work that we do incidental to doing the job—there is quite a lot of preliminary work in connection with it—from a sales standpoint we go out to a house and talk to a lady concerning her over-all move. She will tell us—

Q. By Mr. Moore: That is what the estimator is called. [151] Is that what Mr. Retzer referred to yesterday?

A. Yes. You could go out in the capacity of an estimator, a salesman or a service man. It is customary on many jobs that we will go to a residence and talk to a lady about her move. One person may have some particular piece of china that may have an extreme value, that they usually want to be particularly taken care of. Another person may have painting that she would ask your advice as to whether they should be crated and properly protected before they are moved in a van. Sometimes a lady may have furniture she may desire to sell or would not want to move it, and rather than go to the expense of crating it we tell her what she may get for it. We tell her what it would cost her if she went to ship it, for instance, to New York or to San Francisco, a heavy base.

We go further than that; we advise people regarding the utility disconnections, the milk man or stove man to disconnect her stove.

(Testimony of James Cummins)

You take a lady with a modern radio, ordinarily she would just move it. She is unaware of the fact that this arm that is on it would have to be properly crated before it is moved. We would recommend to her a radio man.

If she is, for instance, being transferred overseas, which a lot of them are today and have been in the past prior to the war, of course, if she has rugs and woolen goods that she is not going to use, we recommend that she have her rugs cleaned, [152] sterilized and moth-treated. Also, her upholstered furniture.

We tell her, further, if she is not going to use them—we will say she is going to Guam or to Honolulu—we tell her, if she puts them in her basement and not being used, they should be re-treated at the end of six months.

Q. What is this wardrobe that Mr. Retzer referred to yesterday?

A. A lot of people are not aware of this wardrobe service despite the fact it has been in service, I think, for 20 years. A wardrobe is a big box. It saves the lady from putting her clothes into a trunk and pressing them tightly together and having them all wrinkled. We give them a wardrobe service, where you put the wardrobe right in front of the closet and it is carried to the destination in that wardrobe, and the clothes are hanging just like they were in her clothes closet. Sometimes they get squeezed in a little tight and they will get wrinkled in spite of our assurance to the lady that she will get good

(Testimony of James Cummins)

care taken of them. And that goes on almost every moving job.

Q. What is your service in connection with storage of household effects?

A. Well, in connection with your storage, a lady decides to move. It may be a divorce in the family or a death in the family, or she may decide to move to Florida for the summer or the winter, and she wants to store her goods and she asks [153] us about our services. We tell her, again, about moth-treating, if they are going to be in for sometime and—

Q. I am now speaking about the storage service, that is, taking the household goods and putting them into your warehouse for indefinite storage or fixed period of storage.

A. You want the detail of the operation?

Q. Not out at the house, but what do you do with the goods when you take the goods?

A. Well, we bring the goods into storage and as soon as our truck backs up to the platform, the goods are taken off and made a check of, listed by the warehouseman or the warehouse foreman or the checker. Then they are put by the elevator door and placed in the elevator and taken upstairs. Each individual piece has a tag on it.

I might digress for a minute by saying if some of this be upholstered pieces and were to be moth-treated, wrap-

(Testimony of James Cummins)

ped or cleaned, we would arrange with a cleaner to have them cleaned for her and ultimately brought back into the warehouse and put in with her lot. We will say that we store them on the fourth floor. It goes up there and the warehouseman examines the furniture. If there is any damage, he will call the attention of the checker to it if the checker did not catch it when it was coming in, to take an exception to it. Then it is wrapped with paper. The upholstered pieces that we retain are covered with paraffin and sometimes sprayed, and then they are wrapped [154] in a craft paper. The rugs, if they are not cleaned by an outside cleaner, we wipe them off, cover them completely with paraffin and cover them heavily with a particular kind of paper and put them into a pool. It is piled and cubed, as we refer to the measurement, and the billing sent to the lady.

If the storage is in for a period of several years, it is good warehouse practice at the end of a year to notify her that her goods have been in storage and that, for the protection of them, they should be cleaned, and again they should be re-treated with naphthalene.

Q. When the end of the period comes what is usually the situation if a person has left their goods there? What do you do?

A. I might mention another important phase of that while it is in storage, that the lady may be in Boston and she will write to us and tell us to send her—well, we will

(Testimony of James Cummins)

say an easy chair. We will go into the lot and dig it out and ship it to her. She may designate her sister to go into a second drawer of a bureau and take out a pair of nylons that she thinks she has in there, or she gives a letter of authority to her friend to come in. The warehouseman arranges for access and it is taken out and sent to her. At the end of the time we send her a bill each month for storage. If the lot is to go out, we will say, she wants it delivered in San Francisco, well, we haul it on our own trucks up to San Francisco or down to [155] San Diego; or if she is going to live locally in Los Angeles, she may decide she wants to sell out. We arrange for an auctioneer to come in and give her an estimate of it. We may have some friendly connection in the furniture business and may do better in price. We will tell the friend of ours in the furniture business to come in and bid on it, that with the intent of getting her a little better price if she has, for instance, a combination radio, particularly in the last five years—

Q. Mr. Cummins, just let me ask you, can you give us a little more in detail what is done with goods from the time the person orders them out of storage until they are delivered, say, on Wilshire Boulevard to Apartment A of 9237?

The Court: We will recess until 2:00 o'clock.

(Whereupon a recess was taken until 2:00 o'clock p. m. of the same day, Thursday, October 24, 1946.) [156]

Los Angeles, California, Thursday, October 24, 1947,
2:00 P. M.

The Court: Proceed, gentlemen, Mr. Moore. Mr. Cummins, take the stand.

JAMES CUMMINS (Recalled)

Direct Examination (Resumed)

Mr. Moore: Will you read the last question, Mr. Reporter?

(Question read by the reporter.)

Q. In other words, can you take a hypothetical case, Mr. Cummins, and trace when you get an order to take something out of storage? What do you do for the customer?

A. Generally, the customer comes to the office and signs her copy of the warehouse receipt. I might possibly go back a little bit and tell you just what is a warehouse receipt.

The Court: Oh, I think we understand that. Just proceed with the actual work.

A. The order is given to our dispatching office to deliver this lot on Wilshire Boulevard. Word is passed to the warehouse foreman who has to get the lot ready to go out. The instructions are, if there is naphthalene on the rugs, they should be wiped off; the chesterfield is to be brushed off if there is any dust on it. The furniture should be rubbed down. It is placed on a truck and delivered out to a resi- [157] dence. If there are any particular items in that lot that would call for special attention, for instance, a valuable painting that may be in a crate, the dispatcher will in turn notify the truck operator that he has a \$50,000 picture on there, to be extra careful

(Testimony of James Cummins)

with it in the handling of it. It is not uncommon in some cases where, depending on the nature of the job, how big it was, if our services were needed, to further go out and help the lady in putting these things up or hanging her drapes.

Q. By Mr. Moore: Now, when the merchandise gets from the warehouse to the designated destination what takes place then?

A. When it gets to destination what happens?

Q. Yes. What is the service, what is the operation of your company?

A. Well, the first thing would be done, the rugs would be taken off first and be laid in their respective rooms.

Q. At the direction of the householder?

A. At the direction of the householder. Sometimes a driver will suggest to a lady that this rug is too big in this room and we will put it in the next room. The rug pad goes first and then goes the rug.

Q. Then what?

A. They would then take whichever is next on the van, possibly the living room, and take the living room furniture [158] and place it as it goes. She may decide to put it by a window, or maybe the driver, if he is on his toes, will make a suggestion.

Q. They put it wherever the person designates the articles to go?

A. Anywhere the lady tells them to put it, they will put it. After it is left, many times she changes her mind and will ask to put it some place else and they will do that for her.

(Testimony of James Cummins)

Q. All right.

A. The next thing, since the living room is in or the bedroom, whatever they worked on, the kitchen will come, and then the boxes that were packed in storage, if the boxes are designated to contain kitchenware, those boxes would go in the kitchen. If it is designated to contain mirrors—

Q. Do they open those boxes? A. Pardon me.

Q. Do they open those barrels and boxes that are delivered as boxes and barrels, or what do they do with them?

A. They take these boxes, put them in their respective places. If the lady wants to have them unpacked, we will unpack them for her. Invariably, if she is a lady of means, she would have our packer unpack back there the next day to unload these barrels and boxes, hang up the mirrors and hang the drapes for her; in other words, arrange that furniture [159] just exactly as she wants it to be and do the complete unpacking.

Q. One other thing: suppose a person is moving from San Francisco to Los Angeles, what is the nature of the transportation service or the operation of your firm in that type?

A. Well, we get an order to move from San Francisco to Los Angeles; we arrange with the Los Angeles office that they will tell us when the trucks are going to be in San Francisco. At that point we will go out—I may go out personally, myself, and I have on many, many an occasion, to the house. We will talk to the lady, look over what she has. First thing we will talk to her about possibly is in regard to the insurance and the necessity of carrying insurance to protect her prized belongings. We

(Testimony of James Cummins)

will tell her of the two or three different forms of insurance that there are, full coverage, basic coverage, and the all-risk policy. We tell her the value of all-risk compared with the basic coverage.

She will want to have certain items packed. As I mentioned previously, she may have some valuables that we could not trust in an open van or in a closed van, or that we might crate a mirror, or she might have some special item that would need a special service; and we would do that at her house. Then we would bring our Los Angeles truck in there, load it and bring it down to destination.

Q. Now, is that only just small, special articles you would crate in a van shipment from San Francisco to Los Angeles? [160] Is that as I understand you?

A. Well, sometimes you would not crate anything. But in many cases, if there were something of very extreme value, or a real intrinsic value that the lady prized particularly, she would be willing to pay insuring against damage, possibly, or the safety of traveling for that particular article. That was her prized possession; she was more concerned about that than she was about anything.

I might mention at this point, in a typical move, that while we may speak of a big job, moved by a wealthy person, we go out to the most humble home and move them to Los Angeles and they are just as concerned about their modest type of furniture that they have as the lady that has the big voluminous home. And if the lady with the modest home is damaged, she will scream just as loud as the lady who has the big home.

The Court: That may be stricken.

Mr. Moore: All right.

(Testimony of James Cummins)

Q. You get the order and the woman is ready to move. What do you do now?

A. Load the furniture on to the van.

Q. Then what do you do?

A. It is transported to Los Angeles.

Q. Does it go directly from the house to Los Angeles, or does it go to an assembly point where other merchandise is picked up? Just describe, as closely as you can, what happens [161] to that furniture from the time it leaves until the time it arrives at its destination.

A. Either of two or three things could happen to it. If she is going to a house as large as she was moving from, invariably the entire furnishings would go to her house. If she was going to a smaller house, we would put part of it in storage and hold it there for her.

Q. Well, if you put that in storage, then the other merchandise goes in the house, and what is the next order in sequence of operations?

A. In some cases the van may have some other lot on there that is coming into storage. We would put the stuff into storage at that time. In another instance, they could go out to the house and she will decide what pieces she will keep, and bring the balance of them into storage, those she doesn't want to keep there.

Then, as I said, the unpacking service. If she so desired our man to come out the following day, he would come out there and unpack it. On the other hand, the driver that is on that particular truck, if she just has an inconsequential amount of packing, say, three or four barrels, he will do the unpacking at that time for her, quite often putting away the furniture.

(Testimony of James Cummins)

Q. Who unloads it? What is done now when it arrives at the house, if you can just visualize that, please? [162]

The Court: Counsel, do we have to have that testimony? If goods are delivered to a house, I am going to assume that they are unloaded and put in the house and unpacked. I don't know what else you could bring out. I assume they are not left in the street.

Mr. Moore: It is just who does it, your Honor.

The Court: Well, his employees do it. Who else would do it? A great deal of this talking about bringing a package to the warehouse and then putting it in the warehouse and then putting it in a certain place, that to me is unnecessary. I think the court knows all about those things. All right, ask the next question.

Mr. Moore: That is all, Mr. Cummins.

The Court: Wait a minute, wait a minute.

The Witness: Oh, excuse me.

Q. By Mr. Beardsley: Mr. Cummins, your company does not now have the Navy contract, does it?

A. No, sir.

Mr. Beardsley: That is all.

The Court: That is all. When was the Navy contract terminated?

Mr. Moore: June 30, 1946. I think that another witness will be asked those questions.

The Court: All right. [163]

TWYMAN R. BRAMMER,

called as a witness by the defendant, being first sworn,
was examined and testified as follows:

The Clerk: Your full name?

The Witness: Twyman R. Brammer.

Direct Examination

By Mr. Moore:

Q. Mr. Brammer, you are in the employ of the Navy Department? A. Yes, sir.

Q. And what is your capacity with the Navy?

A. Senior inspector of packing and crating.

Q. Your office is at the Naval headquarters in San Pedro?

A. San Pedro or the foot of Twenty Second Street.

Q. Do you have certain official documents of the Navy, which are the prescribed rules and regulations known as "The Navy Manual"?

A. Yes; I have with me The Bureau of Supplies and Accounts Manual which governs shipments.

Q. Does that contain the regulations which apply to Navy personnel? A. It does.

Mr. Moore: Your Honor, at this time there are certain sections from this that we would like to have or offer into [164] evidence. There is one problem: This man says that the Navy Department prefers not to leave this manual in court. I told him we could return it to him at the end of the trial, or whatever fashion the court deems advisable to get these official documents before the court, and accommodate the Navy Department by returning them, if that is satisfactory to the court and counsel.

(Testimony of Twyman R. Brammer)

The Court: Just pick out the sections that you think are material to the case and we will pass on them as we reach them.

Q. By Mr. Moore: The manual which you have before you contains Sections 1870.2, 1870.11, 1873, 1874.1 (c), 1875.7, 1877.1.2? A. Right; it does.

Mr. Moore: At this time we would like to offer into evidence these Navy regulations from this Navy manual.

Mr. Beardsley: We object to them on the ground there is no foundation laid, in the first place, to identify the terms of the Navy contract to know whether it refers to these or not. There is nothing so far in the testimony which would constitute a foundation for introduction of these general regulations on Navy personnel.

The Court: I do not know what they apply to yet. Read 1870.1 and I will try and see what that is.

The Witness: 1870.2, I believe it is.

“Household effects are the personal belongings and [165] household effects which are exclusively the property of the person ordered to make the change of station and which have been in use by such person or his family previous to shipment thereof and which are subject to uniform freight rates.”

The Court: Counsel, I am not clear that I understand. For instance, what is the pertinency of this particular section? We all know what household effects are.

Mr. Moore: The pertinency of this and the other sections in connection with it is in line with the part we gave yesterday. In other words, this indicates that these are the individual effects and the individual moves of the Navy personnel as distinguished from the claim of counsel

(Testimony of Twyman R. Brammer)

for the plaintiffs, I believe, that we are engaged in some industrial enterprise by moving the individual effects or household goods. In other words, in the Lonas case the test there was the question of whether or not a personal service rendered, whether it be to a hotel, just customers who use the towels, or whether it be to other institutions, as long as the ultimate purpose or use was for the individual person and that the service was rendered to the individual person. That is the test that we have in this case, and it is not in the sense of moving, let us say, all the furniture out of this court room for the Government. It is merely an agency of the Government; it is merely an individual move of people who are entitled to it, as these [166] regulations will show. They must have it the same as their—I mean they are entitled to have the attention or they are entitled to have their pay. This is merely an accommodation. In effect the law has been changed and in effect next month, which makes it a direct move without going to the accounting office of the Navy or War Department and then submitting vouchers for it.

We also have the regulation here which provides that the Navy man can in turn move his goods at his own expense and submit the voucher in accordance with his right to have certain pounds moved; and the regulation provides that if he ships over the weight, it becomes his personal responsibility to pay for any overage.

It also provides that he has a claim for any damage which is shown. It is not a Government responsibility or a Government claim. If his goods are damaged in transit, it remains his claim and his property.

The Court: I understood that this was a contract between the defendant, a corporation, and the Navy, and

(Testimony of Twyman R. Brammer)

not a contract between this corporation and the individual serviceman in the Navy.

Mr. Moore: That is true, but it is for the individual service of the Navy man.

Mr. Beardsley: If the court please, I would add to the grounds of my objection, not only that no proper foundation [167] has been laid because the contract has not been presented to see whether it in any way refers to these regulations, but also that this point is not material. We do not dispute that the household goods were owned by the individual. That is what the section Mr. Brammer has read discusses. That is right. That is not an issue in this case, who owned the goods. We set forth that they were goods owned by the individual Navy personnel, but they were moved under a general contract. The Navy, as I understand it, accepted bids from various people in the moving business, and some one particular mover contracted with the Navy to do all this work in this area under a Navy contract.

These regulations do not bear upon that issue at all, and what the Navy definition defines as goods of the individual, or what the Navy says about his right to recover for the loss of his own goods—which, of course, would be his right—is not material to this case.

If the goods are moved on a Navy contract, not on a retail person to person basis, then clearly, they are without the retail institution, which is the 13(a) (2) exception or exemption under this act.

Mr. Moore: You mean the serviceman, and not the retail.

Mr. Beardsley: Yes; the definition of “retail” comes into that same exemption, and the question we are con-

(Testimony of Twyman R. Brammer)

cerned with is whether this is contract work done for the Navy on [168] the wholesale scale under such a contract, or whether it is individual work such as Mr. Cummins was describing as to their present functions. His testimony is about what they do now, where they go out and see the lady and take her bid and so on.

Coming down to my objection, the section which the witness has read has nothing in which it would bear upon the issues in this case. It states the Navy's definition of what is personal property of the particular naval personnel man.

Mr. Moore: That, of course, is the only section which he read, but I outlined the others which I thought were pertinent to the subject here before us, and that is: What are the rights of the naval personnel in connection with these goods?

The Court: Of course, we are concerned now with the fact that these may all have been ignored in the contract. There is no showing that these in any way apply under that contract.

Mr. Moore: Yes; all of these rights which the naval personnel have, as provided in the regulations, are the rights which the carriers are subjected to.

The Court: Well, we haven't any evidence on that.

Mr. Beardsley: That is where the foundation lies, if the court please.

The Court: We have no evidence of that, have we?

Mr. Moore: Of course, we have this man on call here, who has come actually out of turn at our request, and we do not want to keep from his work. [169]

The Court: That is satisfactory.

(Testimony of Twyman R. Brammer)

Mr. Beardsley: I have no objection to their being identified.

The Court: But the point is that this witness is reading regulations that the court so far has no testimony to decide whether or not these were ever incorporated in the contract with the defendant. Suppose the Navy has just made a one-paragraph contract with this defendant and said there were certain specified rights. You shall do these things. This does not apply to these regulations. In other words, the contract, unless it specifically incorporates these provisions, they would not be pertinent in the case, would they?

Mr. Moore: If the Navy made a one-paragraph contract and said: you are to move Navy personnel's goods and the Navy personnel are granted by Congress broad Navy regulations, these rights in connection with their personal goods, I think it is by reference incorporated in the contract as much as any other right which either the carrier is subjected to or which the Navy personnel would have the right to claim whether they were party to the contract or not.

The Court: You mean without any reference to it?

Mr. Moore: Without any reference whatever.

Mr. Beardsley: I suggest to the court that these regulations really control the relationship between the man and the Navy. The man in the Navy is undoubtedly subject to Navy [170] regulations, but a contract with the Navy, I do not think would be subject to the regulations between the man and the Navy.

I have not seen the contract you signed. I do not know whether this is referred to or not, but clearly that

(Testimony of Twyman R. Brammer)

would be a necessary part of the foundation for this testimony.

Mr. Moore: I think that we can bring it out from this Navy man who is on the stand that all of the claims which the Navy man has are against the carrier. The Navy made the contract with the carrier for the removal of his household goods, but when the contract is in effect and the goods are moved through the carrier, whoever it may be, that the Navy has for his convenience, the man in turn has a claim for damage and it is against the carrier who carried it, without him having employed the carrier or having the contract with it.

The Court: That is on the theory that the contract is made for his benefit and the beneficiary can enforce the terms of the contract made for his benefit. I think that is the general law.

What I am concerned about here is that the Navy has designated certain articles that is the personal property of the particular enlisted man in the Navy. I am just wondering what the pertinency of that is, without having read this contract. That is what bothers the court at this time.

As both counsel know, if we get evidence in here that we [171] consider pertinent and pass judgment on it, and then find out in the Circuit Court that the evidence should not have been admitted and the court gave due weight to it, you haven't got any judgment.

I should think that this contract, which is evidently in the possession of the defendant, should be introduced into evidence and then show that these sections that the witness is reading apply to that contract, until I get to the point of determining whether or not that is evidence to

(Testimony of Twyman R. Brammer)

be considered. I cannot decide what evidence is admissible without knowing what the evidence is, and that is what is bothering me now.

Mr. Moore: May we have a stipulation here, then, that the book which this officer or this Navy man has brought is a set of official regulations of the Navy, and that it be left in the custody of the court for our future reference until such time as we are ready to identify or tie in the section which we have indicated are pertinent; and upon the conclusion of the case, that the manual be returned to the witness who is here on the stand?

Mr. Beardsley: Maybe I can be of service to counsel. I am not going to question the genuineness of the book which the witness brings here at all. I am sure he would not, and I know Mr. Moore would not, present a document which was not genuine. If he wants to make certified copies of the sections which he has in mind and offer the certified copies, when the [172] proper foundation is laid I can't see objection to that. I would stipulate these are the regulations which this man is under, and he can take that book home with him tonight. That is the way I understand it.

The Witness: May I make a suggestion?

The Court: All right.

The Witness: I can take out the section that applies to the shipment of household goods, I think, and leave it in the custody of the court.

The Court: How long is it?

The Witness: Oh, it is just about 20 to 30 pages.

The Court: All right; that will be satisfactory. That is all that we want.

(Testimony of Twyman R. Brammer)

The Witness: And I can state that these regulations were in effect during the last past few years, during the time of this contract.

The Court: Do you know when this contract went into effect and when it terminated that is involved in this action?

The Witness: I would not state that it was in effect during all of the action, no; because I do not know all of the dates. I was in the service several years and I have not kept up on that.

The Court: Who would have the information?

The Witness: You can get it. You can request from the Naval Supply Depot, San Pedro, to get a statement of the dates [173] of the contracts and who held them for the period, and I will furnish it through the attorney.

The Court: All right. Mr. Moore, you will take care of that. That is all, thank you.

Mr. Beardsley: May I have the witness' telephone number in case we should need to call him back to court? Is that satisfactory? Do you have a telephone number?

The Witness: Terminal 22611, extension 150.

The Court: Do you have a telephone at your home, too?

The Witness: Yes, sir; Terminal 24862.

The Court: What is the address?

The Witness: 1600 Dodson, San Pedro.

The Court: All right; thank you.

Mr. Beardsley: May those (regulations) be marked B for identification?

The Clerk: Yes; that will be Defendant's B for identification.

Mr. Moore: I will call Mr. Diegel.

MAYNARD DIEGEL,

called as a witness by defendant, being first sworn, was examined and testified as follows:

The Clerk: Your full name?

The Witness: Maynard Diegel. [174]

Direct Examination

By Mr. Moore:

Q. What is your address, Mr. Diegel?

A. 1422 South Delmar, San Gabriel.

Q. Are you presently connected with the Coast Van Lines, Inc.? A. I am.

Q. In what capacity?

A. I am assistant secretary and manager.

Q. How long have you been associated with the Los Angeles office of the Coast Van Lines?

A. Since October the 25th, 1944.

Q. Was that immediately following the purchase of the stock in the change of ownership as it now exists?

A. That was on the day.

The Court: Up to the present time?

The Witness: Up to the present time.

Q. By Mr. Moore: And you have been so engaged since? A. That is right.

Q. Are you familiar with the accident or fire which took place in the building of this property about June of 1944?

A. Am I familiar with the—what was the question, sir?

Q. I say, were you here at the time the fire occurred?

A. No. That occurred on June the 4th, 1944 and I came [175] down in August of '44, and then immediately was employed by the company in October.

(Testimony of Maynard Diegel)

Q. Did you say you came down shortly after the fire?

A. Yes, sir.

Q. I show you a picture and ask you if that is a fair representation of the condition of the office and warehouse at 423 East Third Street shortly after the fire which occurred there on June 4th?

Mr. Beardsley: Now, just a moment, for the purpose of an objection. I object to that on the ground that the witness has stated he was not here at that time. The record may show—excuse me—that the picture appears to be dated June 5, 1944, and this witness has testified that he was not here until sometime in August.

Q. By Mr. Moore: Did I understand correctly that August was the first time you were down here after June, '44?

A. That is right.

Q. And you did not see the premises then?

A. I did not see them in this condition. The rubbish was taken out when I saw it.

The Court: All right; objection sustained. Proceed, Mr. Moore.

Q. By Mr. Moore: Mr. Diegel, as manager of the Los Angeles office of the Coast Van Lines, do you have charge of the books and records of the company? [176]

A. Yes, sir; I am in charge of that end of the business.

Q. Are all the records of the company kept under your jurisdiction?

A. They are.

Q. Have you had occasion to make an examination of the records of the company for the month of June, 1945?

A. For July, 1945.

Q. For July, 1945. Have you examined those records?

A. Yes; I have.

(Testimony of Maynard Diegel)

Q. How do you normally break down your records for your business? Is it divided according to your transportation or hauling or storing or packing or—

A. Our books break it down into three principal divisions: one for storing, one for packing and crating, and one division for transportation. That is the final records. That is the way the ledger accounts are, the general ledger accounts are kept. However, the original entries contain other data that we have worked on.

Q. What other sources of original records do you have besides this ledger?

A. In nearly all cases are what we call our waybills, freight bills, are the source of original entry. What I mean, that is the first. That is the first thing that is written. From that the operation is performed, and then that waybill comes to the office and is properly divided into the principal [177] divisions as I have stated.

Q. From an examination of these records, Mr. Diegel, what do they disclose was the storage business done within the state or without the state, that is, the interstate commerce or intra-state business entirely within the state in the storage department during the month of July, 1945?

Mr. Beardsley: That is objected to on the ground the testimony does not show thus far that there is any separation between intra-state and interstate business. He testified to the other three divisions.

The Court: Ask that question first, Mr. Moore.

Mr. Moore: I beg your pardon? I did not hear you.

The Court: Ask that question first, if there is a breakdown.

(Testimony of Maynard Diegel)

Q. By Mr. Moore: Do your records show whether the business of the storage department, packing and crating or transportation is interstate or intra-state?

A. Our principal records do not show that, but we have worked up a break-down for July, 1945 which does reveal how much is intra-state and how much is interstate.

Q. And how was that done from the records?

A. Well, we had to pull each individual waybill to ascertain from the information on it if it was a shipment that was going to ultimately leave the state; and if the information was not there and it happened to be a Navy shipment, [178] we could tell from the confirmation or the instructions we received from the Navy whether it was going out of the state or in the state.

The Court: Have you got that information?

The Witness: Yes, sir; I have.

The Court: All right; let us have it.

Q. By Mr. Moore: What did your storage business show for the month of July regarding intra-state and interstate business?

A. For the month of July there was \$17,344.65 worth of intra-state business and \$11,754.94 worth of interstate business.

The Court: Give me the "intra" again.

The Witness: The intra, your Honor, is \$17,344.65.

The Court: All right. Is that just under the Navy contract or is that your general business for July?

The Witness: That takes in all the business, the Navy and the—

The Court: Public.

The Witness: —and the other, what we call our all other business.

(Testimony of Maynard Diegel)

The Court: All right.

Mr. Moore: Your Honor, I have a summary of Mr. Diegel's work I have handed to counsel and, in the interest of time, would the court care to have that summary introduced with what- [179] ever questions will be necessary?

Mr. Beardsley: May I ask one or two questions on voir dire?

The Court: Yes.

Q. By Mr. Beardsley: Mr. Diegel, this is a summary not prepared in the normal course of the business, but prepared for use in this case, where the issue of whether business is intra-state or interstate is raised, is that correct?

A. That is right. We had to go to the original source, original entry of the original documents to determine this.

Q. And this typewritten summary which you have before you now was prepared for use in this trial and not in the ordinary course of business?

The Court: He said yes.

A. That is right.

Q. By Mr. Beardsley: You do not have any regular records other than summaries prepared for this special purpose, showing this information?

A. That is right. We can substantiate all of these figures.

Mr. Moore: At this time we will offer into evidence the summary of Mr. Diegel as defendant's next numbered exhibit.

The Court: Admitted.

The Clerk: Defendant's Exhibit C in evidence.

(Testimony of Maynard Diegel)

The Court: Is there a copy for the court? I believe [180] that is for the record.

Q. By Mr. Moore: In all departments of your business, whether it was the storage, packing or crating or transportation, did you find more than 50 per cent in intra-state business in the month of July, 1945?

Mr. Beardsley: Now, that is objected to as calling for a conclusion of the witness. Counsel has now put in some sort of a record which I assumed the witness was going to testify from.

The Court: The instrument which has been marked as Exhibit C does not indicate on the instrument itself whether it is a year's business or a week's business or what it is.

Q. By Mr. Moore: Mr. Diegel, will you state what the Defendant's Exhibit C covers?

A. The Exhibit C covers a break-down for the month of July, 1945.

The Court: I see right on the top of it "July 1945-Total business of defendant." All right. The record, Mr. Moore, speaks for itself, doesn't it?

Mr. Moore: That is right, sir.

The Court: All right; proceed.

Q. Do you have any records of the total business done by your firm, based on six months' periods which run from August, 1942 up to the present time?

A. We took a period of three years, starting July 1, [181] 1943, and we broke it down into six months' sections, the first section being from July 1, 1943 to December 31, 1943.

(Testimony of Maynard Diegel)

Q. What was the total business that was done during that period?

A. In that period there was a total business done of everything amounting to \$185,503.07.

Q. What of that was under the Government contract, what amount?

A. We grouped the Government contract with other Government business which was not great, that is, the Navy contract was the biggest part of it, but we took all Government work and put it into one section and it amounted to \$87,743.21. Then that leaves a balance for all other work or revenue amounting to \$97,759.86.

Q. For the period from January 1, '44 to June 30, '44 what was the total business done by Coast Van Lines?

Mr. Beardsley: May I inquire again? I understood their records were burned. May I ask a little about where this information comes from, if the court please?

The Court: Yes.

The Witness: I think I can best explain that by the—

Mr. Moore: You mean on voir dire?

Mr. Beardsley: That is all right. That is what I want him to explain. Apparently he is starting out to explain it.

Mr. Moore: All right. Yes, sir. [182]

The Court: You may continue.

A. The office was on the first floor, and when the fire destroyed the building, two doors in the office—as I understand it from other employees that we have that are still with us and were there during the fire on the day preceding and following the fire, the reason that the records were burned and how they were burned was that the door of the office, two doors of the office, was left

(Testimony of Maynard Diegel)

open and the fire got into the office through those doors and damaged completely certain records that were nearest the doors and partially damaged, water damaged and smoke damaged other records, and some were intact.

It so happened that the night before the fire the auditor from the Internal Revenue Department was there working on the books and had some of the ledgers, one general ledger and some of the sales records, as well as distribution books, in the back office and they were completely destroyed. Then when the firemen came they removed, under direction of the company's managers, the documents and the books that were not damaged and put them out in the street, and some of them were left in pretty good shape and others not so good and some completely gone, and those were all taken over to 1320 Margo Street to another one of the warehouses and they were kept there until the Third Street building was rebuilt, and then they were brought back and we put them into our record room and we [183] still have them there in the condition that they are. They are rather difficult to work with. Some points, and these points, when I come to them, if I do in my testimony, I will specify where the records are incomplete and it is impossible for us to get the figures.

These figures are principally taken that I am quoting from—are principally taken from actual records we still have, such as the general ledger covering this period, and it was easy for us to take from them the figures that I quoted for that first period. There is nothing in these figures—

Q. By Mr. Moore: I take it that some of these accounts have supporting original source entry, but that

(Testimony of Maynard Diegel)

these figures have come from the general ledger which was supplied to you or which came to you at the time the firm was bought in October, 1944?

A. That is right. I got one section here of a previous six months' period from January 1, 1943 to June 30, 1943, in which I only have a total taken from the statement that we found, a financial statement, taken from some financial statements that we were able to ascertain the total, but we did not have suitable records to break it down into Navy and Government business and other business, but we did know the total. So then, I skip that six months' period as far as breakdown is concerned, and start with the next period, as I have already quoted, from January 1, '43. I have broken it [184] down into such divisions for a period of six-months' periods, or three years.

Q. By Mr. Beardsley: None of these records, up to the time you came here, of course, were prepared under your direction; you have them only as records which were turned over to you after this fire, is that correct?

A. When we bought the business, from an audit made, certified, accepted, and turned over to us as being correct for the previous years.

Q. Well, but the question is: None of these records were kept under your supervision? A. No.

Q. You are not referring now to the audit, but to the records, the original records such as they were left from the fire, is that it?

A. That is right. We had to accept the statement of the other stockholders.

Mr. Moore: Any other questions, Mr. Beardsley?

Mr. Beardsley: No; that is all.

(Testimony of Maynard Diegel)

The Court: Proceed.

Q. By Mr. Moore: What does your record show for the six months' period from January 1, '44 to June 30, '44 as the total business done by the company?

A. The total business was \$176,656.90.

Q. And of that what amount was under a Government con- [185] tract or Government contracts?

A. Navy and Government or Government business was \$100,547.72; all other business was \$76,109.18.

Q. For the period from July 1, '44 to December 31, '44 what was the total business of the company?

A. The total business was \$159,226.63.

Q. And of that what amount was Government contract work?

A. Government, \$68,816.72; other, \$90,409.91.

Q. For the period from January 1, '45 to June 30, '45 what was the total amount of business done?

A. The total was \$131,585.17, divided—

Q. Of that how much was Government business?

A. Divided, Government \$67,766.72; other, \$63,-818.45.

Q. From July, '45 to December 31, '45 what was the total business done? A. \$205,669.39.

Q. And of that what amount was Government business?

A. Government, \$108,174.48; other, \$97,494.91.

Q. Do you have a record for the period from January 1, 1946 to June 30, 1946?

A. Yes, sir. Do you want me to get you the figures?

Q. Yes; the total of the figures.

A. The total is \$178,352.01, divided, Government, \$101,208.75; other, \$77,143.26. [186]

(Testimony of Maynard Diegel)

Q. Mr. Diegel, have you made an examination of the records of the company to determine what per cent of the Government business for a six months' period is either intra-state or interstate in nature?

A. Yes; we have. We took a six months'—we took that July—quote the question again.

The Court: Repeat the question.

(Question read by the reporter.)

Q. By Mr. Moore: Have you done it for any six months' period, just yes or no? A. Yes; we did.

Q. What six months' periods have you studied?

A. We made three six-months' periods here from July 1, 1944 to December 31, 1944.

Q. And what else?

A. And also, two other six-months' periods from January 1, 1945 to June 30, 1945.

Q. Any others?

A. And July 1, 1945 to December 31, 1945.

Q. Did you go in those to the same extent as you did in the analysis you made for the month of July, 1945?

A. Yes. We analyzed—

Q. Merely intra and interstate character?

A. Yes. We analyzed every Navy and Government order or voucher for that entire period covered by those three six- [187] months' periods.

Q. Take the first six months' period beginning in July, 1944 of the Government business; what per cent was interstate and what per cent was intra-state?

A. We found that 59 per cent was intra-state, and that would leave 41 per cent for interstate.

(Testimony of Maynard Diegel)

Q. For the second period, January, '45 to June, '45 what per cent was intra-state and what per cent interstate?

A. 55 per cent intra-state, 45 per cent interstate.

Q. For the period from July, '45 to December '45 what per cent of the Government business was intra-state and interstate?

A. Intra-state was 53 per cent and the interstate was 47.

Q. Can you estimate the percentage of business other than Government business as to what per cent is intra-state and interstate?

Mr. Beardsley: Oh, I will object to the estimate. We are not objecting to these analyses made, if the same process was gone through. I think it would be entitled to the same weight, whether it is, as this testimony.

The Court: I understand that is what he is asking.

Mr. Beardsley: He asked him if he would estimate. Heretofore he has not asked him if he would estimate. He said: Have you analyzed, order by order and found out exactly where [188] it was going?

The Witness: Let me give you on one month.

Q. By Mr. Moore: What month is that?

A. July of 1945.

Q. What did you find in the month of July of 1945 for other business other than Government business as to what was intra and interstate?

A. 12 per cent was interstate and 88 per cent was intra-state.

Q. Have you made any cursory examination of other months to determine what that percentage would approximate for other than Government business?

(Testimony of Maynard Diegel)

Mr. Beardsley: I will object to any testimony about cursory examination. The records are there in their control and it would not be proper testimony.

The Court: Your witnesses have speculated on that without any records or anything else.

Mr. Beardsley: They have no records. These people have the records.

The Court: Oh, no. But I permitted your witnesses who were in the warehouse, etc., and who packed these to say about what they thought, without any information in front of them.

Mr. Beardsley: That is true, your Honor. But, of course, it is always the position of an employee that he has no [189] records. And apparently as to these periods now being testified about, they are periods shortly after the fire, when they have complete records, and I think that a cursory examination of them is not a proper basis for an auditor's statement.

Mr. Moore: Mr. Jamison, I think, was the vice-president and he was testifying from—

The Court: Continue, counsel.

Mr. Moore: I did not hear the court.

The Court: Continue.

Mr. Moore: Will you answer the question, Mr. Diegel?

Mr. Beardsley: Was the objection overruled, your Honor?

The Court: Yes. It goes to the weight of the testimony. I will find out what he has.

A. The all other business, it is self-evident to me in the position that I am in to know very close to the percentages, the very fact that—I won't get involved in that.

(Testimony of Maynard Diegel)

But it runs between—it would vary a little bit—it would run between 80 and 95 per cent intra-state and 5 and 20 per cent interstate.

Q. By Mr. Moore: What period does that approximation cover?

A. Well, that would cover under my personal supervision from October 25 of '44 to date; and I feel certain that investigation would prove that the other months would fall under those percentages, because I do have access to previous [190] records which, in other divisions or other investigations, have shown that they run nearly consistent with the business as I know it.

The Court: You can work out the figures for us between now and Tuesday, can't you?

Mr. Moore: Your Honor, that was one of the things that this was all leading up to. We give the court as complete a picture of what we have. As an indication of the time it takes from an examination of each of the original sources to divide them into the intra and the interstate goods, because the basic records are not kept in that particular classification or that separation, and we are in a position of again offering to find as much as the court feels that is necessary. We find that it takes about 100 man hours to produce the one month which we have made the detailed examination of.

I think the court will also observe that that particular month was taken from a six-months' period in which the Government business was probably larger than the other business, which we considered would be the most advantageous of any period that we had during the time that we were in the midst of this period, subject to reduction.

(Testimony of Maynard Diegel)

The Court: But, you see, the figures are at such severe variance, the actual figures that he gives, from the guess that he gives, that that is why the court made the inquiry, to justify in some measure such a terrific disparity between [191] the figures.

The Witness: Your Honor, I must have been misunderstood, then.

Mr. Moore: If I may repeat what I understand. My question to him was what per cents of the business other than Government business, by the figures that they had analyzed for the month of July, 1945, constituted intra-state business and what interstate, that is, exclusive of the Government business. In other words, this group that was listed as \$108,000 in that six months' period was Government business, while \$97,000 was other business. For the month of July the amount of business done other than Government, I believe he testified constituted 80 per cent in intra-state business, and that in the Government over these six months periods ran approximately 59 per cent, 55 per cent, and 53; and that the only period that an exact test was made for other than Government was for July, and his opinion was that for all of the periods, approximating what it would be with the knowledge he has of the records and working with them, that it would run between 80 and 95 per cent intra-state business on other than Government business.

The Court: No; that is not the testimony. The testimony is that in July, 1945 other business, not Government, interstate was 12 per cent.

Mr. Moore: Correct. [192]

The Court: And 88 per cent was intra.

Mr. Moore: 88 per cent, is that the intra-state?

(Testimony of Maynard Diegel)

The Court: That is right, intra. Now, when he guesses at it, then he cuts the other business, and other than Government business in interstate more than 50 per cent and takes that down to five per cent.

Mr. Moore: Inter or intra?

The Court: Interstate. Five per cent, which is less than 50 per cent of his actual figures that he gave, and 95 per cent intra-state. That is why the court made the remark.

Mr. Moore: His estimation was 80 to 95 per cent.

The Court: Oh, no. His estimate was 95 per cent, leaving five per cent for interstate.

The Witness: Your Honor, can I explain what I mean.

Mr. Moore: May I have the reporter read the record?

The Court: What did you say, Mr. Moore?

Mr. Moore: I say, with the court's permission, I would like to have the reporter read the answer, in answer to the estimate, of what was the intra-state business other than Government, following his statement of what the intra-state business was in July of 1945.

The Court: Can you find that, Mr. Bargion?

(Record read by the reporter.)

The Court: I just put down "95" there, Mr. Moore.

Q. By Mr. Moore: Do I understand, Mr. Diegel, from that, [193] that you mean five to 20 per cent would be in direct ratio with the higher or lower intra-state business done during a particular period? You estimate, as I understood, five to 20 per cent interstate, and if it was five per cent in one month, that would mean 95 per

(Testimony of Maynard Diegel)

cent intra-state and five per cent inter, or 80 per cent intra and 20 interstate? A. That is right

Mr. Moore: That is all.

Mr. Beardsley: Is that all with this witness?

Mr. Moore: Yes.

Cross Examination

By Mr. Beardsley:

Q. Now, Mr. Diegel, the one month which you thoroughly analyzed on question of division of business between Government, commercial, and other classifications, and division between interstate and intra-state, was this month of July, as shown by Exhibit C, is that correct?

A. That is right.

Q. And you say that you have the accurate figure there; that the per cent which was interstate was 12 per cent and intra-state 88 per cent during that month?

A. That is right.

Q. Does that carry through all of the three divisions of the business of the company you have mentioned or is that [194] a total?

A. That is through all three divisions.

Q. I see. Now, when you started to testify and before this Exhibit C was introduced in evidence or just as it was being introduced, you gave some figures on intra-state and interstate: \$17,344.65 intra-state and \$11,754.94, I believe it is.

The Court: That is right.

(Testimony of Maynard Diegel)

Mr. Beardsley: —Interstate. Now, that percentage, of course, is almost equal, isn't it, between intra and interstate; that was storage business, as I noted your statement, for July, is that right?

A. No. That was the total business for July, \$29,000 worth of business, of which \$17,000 was intra and \$11,000 was inter.

Q. That is the total storage business or the total business of the company?

A. That is the total business; that is everything.

Q. Is that in the ratio of 12 per cent to 88 per cent, those two figures you have just given, 11 and 17?

The Court: That is argumentative, counsel, and self-explanatory.

Q. By Mr. Beardsley: Well, is it your testimony now that those figures: 17,000—I am not giving the odd amounts—and 12,000 represent the intra-state on the larger [195] figure and the interstate on the smaller figure?

A. That is right.

Q. Business for July? A. That is right.

Q. Can you show us on this Exhibit C how you arrive at those totals? I just don't have any totals, apparently, except the right-hand column here.

A. Well, we took all this storage business, we took all of these figures. Here is the \$10.00, the 51.25, the 85.94, the 2034.49, the \$21.00, the 33.90, the 39.00, the 1572.32, \$204.50, .75, 2.25, 80.10, 2103.13; and that was all the intra-state under storage, because there was no interstate. So that was all under this column. We are going to get to "2103.13," down to there.

Now, then, in the "Packing & Crating": we recite 7.52, 244.89, 14.63—

(Testimony of Maynard Diegel)

Mr. Beardsley: Wait a minute.

The Witness: It is reversed. Do you want me to check them? Start up here and we will check them. 7.52, 244.89, 14.63, 158.69, 1649.38, and this red figure, Mr. Beardsley, is in there because it was a credit. It was put in there for a correction of a previous month. The same way with this red figure, and we used it merely to arrive at a total to see that we were close to our controls; that we were coming out on this analysis as our books would show. [196]

Then this was intra-state, and then we would take the intra-state from over here, and 690.89, 24.10, 283.81, 6408.33, 1965.19, and that was all the intra-state business, and it adds up to \$17,000 in round numbers.

Q. Now, just a minute. You say that adds up in round numbers. Do you mean that is the equal total of those figures, or are you taking off the two red figures?

A. We are taking off the two red figures.

Q. All right. Then the totals you have given us do not come directly from those on Exhibit C, and they take into account the two other figures which do not appear on Exhibit C insofar as the July business is concerned?

A. The figures are small. There is one of "172.73" and one of "168.68," and we did not incorporate it in there because they are more or less confusing and outside the issue we wanted to get at in this particular analysis. We wanted to get at the total, and it would not throw off the percentage at all owing to the fact they are small.

Q. Did you or did you not subtract from the total of these figures you have just read into the record these two other figures in red ink?

A. Oh, yes; we subtracted.

(Testimony of Maynard Diegel)

Q. You did?

A. Because this figure actually corresponds to our books. [197]

Q. Then Exhibit C does not exactly correspond to your books?

A. Not to within two or three hundred, around \$300.00, on account of those credits.

The Court: What is the exhibit number the witness is testifying from now?

Mr. Beardsley: Exhibit C is the one I hold.

What is it you are testifying from where you have made your pencil checks?

A. It is a recap of the July, 1945 month's business taken from the data that I have here, and also, the same as we have on there, but we did not incorporate the credits, as I say, because it would be rather confusing, and if it was a larger amount, we would have to offset it some other way. But this was just for our convenience in showing. We did not need to even show these figures. We could have made this figure show just exactly the same as that. That \$300.00 would not have hurt the percentage at all. We just merely did it so we would know if we were off at all in our figures from our control.

The Court: What is the exhibit number?

Mr. Beardsley: Exhibit C is the one I hold, your Honor.

The Court: What is the other one?

Mr. Beardsley: Is that the one you are referring to, your Honor? [198]

The Court: No. I am referring to the one the witness is referring to.

Mr. Beardsley: That is not in evidence.

(Testimony of Maynard Diegel)

The Court: Mark it, will you?

Mr. Beardsley: Do you want this as your exhibit next in number for identification? It is brought in by the defendant. I suggest we give it the defendant's next number for identification.

Mr. Moore: My only observation might be, Mr. Beardsley, that rather than taking one sheet out of all these things which he has used as original source of entry, if the court desires, they could all go in.

The Court: All right; as one exhibit.

Mr. Moore: As one exhibit.

The Court: How many pages, Mr. Moore?

Mr. Beardsley: I am not offering those in evidence, if the court please. There is no testimony to support any of them.

The Court: They are just being identified because the witness testified from them.

Mr. Beardsley: That is your number, the defendant's next number?

The Clerk: This will be Defendant's Exhibit D for identification.

Mr. Moore: There are one, two, three—what do you call [199] these, Mr. Diegel?

The Witness: Work sheets.

Mr. Moore: Three stapled work sheets with adding machine tapes at the rear, and three small-sized work sheets making up Defendant's D for identification.

Q. By Mr. Beardsley: Isn't it true, Mr. Diegel, that under the Navy contracts the months of June and July

(Testimony of Maynard Diegel)

were the lowest months in volume of Navy contract work of all the months of the year?

A. No. We picked this because it was a good average month. It was a pretty husky one.

Q. Don't you know as a matter of fact that the bids are called for on Navy contracts as of the end or beginning of the fiscal year, about July 1st, and that there are fewer orders on Navy work during those months immediately before and immediately after July 1st than in any other months of the year?

A. I don't know that; no. I know that July was a good—we picked July '45 because it represented considerable tonnage crated and handled for the Navy that month. I could analyze it further. I do not have the figures here but I could analyze it further and have it for presentation later, and show you how the months run, and that dates from this period.

Q. To your knowledge, then, it is not true that June and July are low months on the Navy contracts, is it? [200]

A. It is not; no.

Q. All right. Now, let me show you Exhibit C again and you show me what ones of these various items on it are Government or Navy contract work under I.

A. There is none.

Q. And paragraph (f)?

A. There is none.

Q. All right. That is the only one under "Storage" that you say is Navy work during that July was 75 cents?

A. That is right.

Q. Out of around \$6,500?

A. That is right. That was all the storage. The Navy pays for no storage.

(Testimony of Maynard Diegel)

Q. Now, let me get that straight. If the material was brought in belonging to Navy personnel, under your Navy contract and put in the storage house, wouldn't that be Navy contract work?

A. Well, you mean for how long a period of time?

Q. You would bill the storage charges, would you, to the individual, but you would bring it in originally under the Navy contract, would you not?

A. That is right.

Q. That is, suppose this:—I am testing now all of your analyses—supposing a shipment of goods comes in from Washington, D. C.. a Navy officer assigned to California; [201] his goods come in through interstate commerce on a freight car; he does not have a house to move into when he gets to Los Angeles; those goods go into your storage warehouse, don't they?

A. That is right.

Q. And then he is allowed a certain amount of storage, is he, that the Government pays for, and thereafter he pays for it, is that correct?

A. At one time, for a six months' period of time he was allowed 15 days free storage with us, and then it was placed into storage, but those 15 days do not appear here as "storage." We did not break that down or contribute to storage revenue for the 15 days; so it does not appear in there. So this is storage that we collected from the individuals.

(Testimony of Maynard Diegel)

Q. Now, there was undoubtedly in this very large item here "Individual"—that is I (d) on Exhibit C, which is \$5,709.94—undoubtedly much of that is money received from Navy personnel, is it not?

A. I haven't broken that down. Some of our revenue for individual storage was from Naval officers but it was not paid by the Navy.

Q. All right. But my point is that that business came to the company under the Navy contract, didn't it, originally; the company was the successful bidder for that Navy business, [202] wasn't it? A. That is right.

Q. And the Navy, however, only paid a portion of the cost; it paid certain moving expense and storage for 15 days, and then the man had to pay his own?

A. Yes.

Q. Or the man paid his own if it was over a certain amount, and then he gets that in case of moving, is that correct?

A. Yes; he could have moved it to another warehouse if he didn't want to store it with us.

Q. Then he would have had to pay the cost of moving it, wouldn't he?

A. I think the Navy would give him another move.

Q. I think we are conjecturing now, perhaps, about what the contract would involve in the way of moving his goods to another warehouse. But, at any rate, under the head of "Storage"—that is the first division before you, I of Exhibit C—while you only have 75 cents in revenue shown as coming from the Government, much more of the revenue in that section comes from business which

(Testimony of Maynard Diegel)

came through the company through the Government contract, isn't that correct?

A. A small percentage of it came that way.

Q. Let us go down to Division II. The only amount in "A" of Division II coming from the Government is "244.89"? [203]

A. That is right; that is directly from the Government, and this figure here under "Individuals."

Q. That is II "A", Item (4)?

A. Yes. That is for packing and crating, and this was paid to us by the Government for individual packing and crating shipments that went within the state.

Q. In other words, your testimony is that in the "Packing & Crating" division which, under "intra-state" is Item (4), it is broken down into "1" and "2", and the "2" there, the larger amount, is Government money, is that right?

A. That was Government money paid us for individual packing and crating jobs; that is right.

Q. Is the same thing true of Item (3) B which is broken down into "1" and "2"? A. Yes.

Q. The larger item, No. 2, was Government paid, was that right? A. That is right.

Q. Is the same thing true under the Item III Transportation where it is broken down into divisions "1" and "2" under "Individuals"? A. That is right.

Q. Will you show me some other sheet that you have in that exhibit, Defendant's for identification D, where you have worked out this percentage of what is intra-state and [204] what is interstate, or did you work it out

(Testimony of Maynard Diegel)

on any of those sheets for any month other than July, 1945?

A. Only for July—for the whole business, only for July.

Q. Did you use the same method of working it out for each period about which you have testified, that is, that you have shown all of the storage business as intra-state and none of the storage business as interstate?

A. All of the storage we have shown is intra-state.

Q. And therefore, if a shipment came from outside of California into California and went into storage that would not be classified in the percentages you have given us as being interstate commerce, is that correct?

A. No. It came to rest at our warehouse and ceased to be an interstate shipment.

Q. Even though you later shipped those goods either to a location in California or somewhere out in California, while they were in your warehouse you would consider them intra-state in all of these percentages you have given us, is that correct?

A. That is right.

Q. Have you any break-down or is it possible for you to make any break-down which would show what proportion of that revenue from goods in storage refers to revenue from goods which had come in from outside of the state and rested [205] in your warehouse, or were resting in your warehouse before going to some point outside of the state?

A. It would be pretty hard to take that off of our books.

Q. You do not have it taken off, I mean, in a summary?

A. We do not. Oh, no.

(Testimony of Maynard Diegel)

Q. In your segregation in these several periods of six months which you have given, those periods where you gave the total business of the company and the Government and Navy business and all other business, that segregation—

A. Yes, sir.

Q. Did you designate as Government business there the same type of entries which you designated as Government business on Defendant's Exhibit C, or did you include some more than those which are designated Government business on Defendant's Exhibit C?

A. No; it was the Government business, was taken, the same method was used.

Q. So that nothing which is not labeled "Government" business on Defendant's Exhibit C would be included among the proportion which you call Government and Navy business on those estimates dividing the total revenue of the company over several six-months periods?

A. We took them from the same source. There is no difference.

Q. Then, in other words, under "Storage" it would be [206] akin to Item I (b) under storage activities only, and not including items such as I (d) which are called "Individual," is that correct?

A. Oh, yes, because that was paid us by the individuals.

Q. And therefore, in your estimate of the gross business and how much of it came from the Navy contract you did not include in those six-months periods any revenue from goods in storage although they originated from the Navy contract?

A. No; we don't. That is all in—that is not any part of the Government business because it is placed in

(Testimony of Maynard Diegel)

there and left with us by the individual, and we place it in storage just like we would any lot that would come to us.

Q. Is it true, also, that in making up those six-months divisions, break-downs of the company's revenue in the packing and crating end of the business, that you designated as "Government" in that break-down the same items designated as "Government" on Exhibit C, Defendant's Exhibit C?

A. In that we included this Item (4) "2", or Item "2" under "(4)" called "Individuals," we included this money that we got from the Government. Under "Packing & Crating" we included in these figures that I read from—this last Exhibit D, I think it is—all of the money that we got from the Government is included in these figures.

Q. But nothing is included under that classification of "Government business" which was paid for by the individuals. For example, if a Commander in the Navy shipped goods in [207] excess of the amount the Government allowed him to ship, so that it paid only a part of his shipping cost and he paid the balance of it, that balance in this break-down you have given us would show under "all other business" and not under Government and Navy, is that correct?

A. We never had one like that. That didn't enter into it as far as we are concerned.

Q. There has been testimony here that they had certain limits on the amount that a man could send, and if he sent more than that amount he had to pay for it himself. You do not have any recollection of that occurring?

A. No.

(Testimony of Maynard Diegel)

Q. By what company were you employed just before you came down here?

A. By Market Street Van and Storage in San Francisco.

Q. That is the same concern Mr. Cummins is still associated with, is it? A. Yes, sir.

Q. Are you still employed by them at all, or are you full-time with Coast now?

A. I am full-time with Coast.

Q. In making this estimate of their business, that is, business other than Government paid-for business, from 80 to 95 per cent of it was intra-state and from 5 to 20 per cent interstate during the period October 25, 1944 to date, did [208] you use the same method of estimating that percentage that you used in computing the percentage for the month of July, 1945 which you gave us as 12 per cent interstate and 88 per cent intra-state?

A. I never had actually figured that out before. Just from observation, I have always felt that those percentages that you last quoted were about right. During recess for lunch today I figured this month of July and I took that exhibit on that white paper over on your desk.

Q. That is Exhibit C, Defendant's Exhibit C?

A. Exhibit C; I took that and I worked out a certain portion of the Exhibit D, and it came out 88 per cent intra and 12 per cent interstate. And the way I did it was to use all of the storage as intra and all of the packing and crating it shows on Exhibit C as intra-state, and I subtracted from it the amount that the Government had paid us and carried the balance out, because the balance is all we are talking about; and this "all other business," and the same way on down through the transportation

(Testimony of Maynard Diegel)

division; and it comes out with the totals of \$15,000 worth of business broken down to 1,800 interstate and 1,300 intra-state, and 12 per cent of 15,000, nearly \$15,100, is 1,800 and some dollars, which is close within a fraction of a per cent.

Q. All of these figures you have given on volume and percentage are based upon revenue, upon money revenue, are [209] they not?

A. That is right; that is correct.

Q. Is that on an accrual or cash basis?

A. Well, that would be on what we call our sales register, and it would be of items whether they were charge or cash items. That is all revenue items.

Q. And none of these figures you have given us are based upon volume of number of pieces or tonnage or in any other way than revenue, money?

A. Just the dollars and cents revenue.

Q. Are there different rates for the time spent in the packing and the time spent in going to and from jobs; is there a different rate of charge for the time on those two operations?

The Court: Is that material, counsel?

Mr. Beardsley: I think it might be, if the court please. Some of these waybills which were introduced this morning seem to indicate a different method of computing time for the driving time and for the packing time, and I do not know what the explanation of that is. I thought it might lie in this difference in charges.

(Testimony of Maynard Diegel)

The Court: It is pretty far-fetched, but go ahead.

A. On some of the shipments done under contract there is one lump sum used, so much per hundred pounds; and it covers all operations that are performed on that particular [210] job. Others, where it is not under contract, why, there is one rate charged for cartage and one rate charged for package.

Q. By Mr. Beardsley: Which is the higher rate, the rate for packing and loading the van, or the rate for driving out and back? Do you know which is the higher rate charged to the customer?

Mr. Moore: Do you mean for labor performed, the materials supplied, or what?

Mr. Beardsley: The rate per hour of the charge to the customer; do you know which is the higher?

A. For the greater portion of the time that we are talking about, from August 22, 1942 to August 22, 1945, for the greater part of that time the rate per hour, two men and a van, was \$5.00, and the rate for packing was \$1.75 an hour.

Q. Per man? A. Per man.

Q. Is it now \$5.50 per hour for two men and van?

A. \$5.50 and two, but that is only recent.

Mr. Beardsley: That is all, if the court please.

The Court: Any questions, Mr. Moore?

Mr. Moore: No questions.

The Court: All right. Call your next witness.

Mr. Moore: Call Mr. Cummins again.

JAMES CUMMINS (Recalled) [211]

Further Direct Examination

By Mr. Moore:

Q. Mr. Cummins, I show you a series of pages stapled together, the first of which is a page marked "tender" and the last of which is page 22, the heading "Schedule 59248," the same schedule number appearing on the first page of the tender, and ask you if you have seen this document before? A. I have.

Q. Will you tell us what that document is?

A. This is the Navy contract that we were awarded sometime in May, 1945, to cover the year's contract from June 1, 1495 to July 1, 1946. In other words, that was the period that we had this Government contract.

Q. Is this the contract under which you performed during that year's period?

A. Yes, sir; it is.

Mr. Moore: I offer it into evidence as Defendant's next numbered exhibit.

The Court: In evidence.

The Clerk: Defendant's Exhibit E in evidence.

Mr. Moore: Your Honor, Mr. Diegel asked me a question about our Exhibit C, I believe, which is in for identification, and wanted to know the wishes of the court, if that should be left here until completion of proceedings or left in his custody since it is not yet in evidence. [212]

The Court: Well, it will be here until this is disposed of.

Q. By Mr. Moore: Mr. Cummins, I ask you to examine the Defendant's Exhibit E, particularly of those portions concerning the tariffs involved, and ask you if those tariffs compare favorably with the tariffs charged for individuals for similar types of work?

(Testimony of James Cummins)

Mr. Beardsley: That is objected to as not within the issues of the case and immaterial; and also, calling for a conclusion of the witness based upon matters not in evidence, what the tariffs are to the individuals, and not the best evidence of those tariffs.

The Court: What is the point, Mr. Moore, so I will be sure that I know?

Mr. Moore: Well, your Honor, I think it was raised by plaintiffs that, regardless of what work was done for the individual, whether it be for the Government or otherwise, that it constituted the bulk of lower priced rate, and that they felt that had some bearing on whether or not it was a service establishment or a service institution, by the price that was charged.

Mr. Beardsley: I have no such contention that the rates or prices charged had any bearing on that. I do not think I have made it.

The Court: I do not think it has any bearing at all and, [213] on the statement of counsel now, I do not believe it is material.

Mr. Moore: That is the only purpose for which the question was asked and I will withdraw the question.

The Court: All right.

Mr. Moore: That is all, Mr. Cummins.

The Court: Any questions?

Q. By Mr. Beardsley: Were there other contracts for other years, or do you know whether there were or not? A. Yes; there were.

Mr. Beardsley: That is all.

The Witness: You are relating particularly to the Navy contract?

Mr. Beardsley: Yes.

(Testimony of James Cummins)

The Witness: Yes; there were two other contracts.

The Court: That is all.

Q. By Mr. Moore: How many—

The Court: Well, go ahead.

Mr. Moore: Pardon me.

Q. How many of those were negotiated by you for Coast Van Lines and how many of them were in existence prior to the time of the fire?

A. When we took over in October—may I qualify my answer?

The Court: Yes; you may explain it. [214]

A. When we took over in October, 1944 there was at that time a Navy contract in existence which we operated under until June 30, 1945, and during the month of May, 1945 we negotiated this contract that I have in my hand.

The Court: All right; that is all.

Q. By Mr. Moore: I show you a document which consists of one page and ask you if you have seen that document before? A. Yes; I have.

Q. Is this the only remnant you have of 1944 contract that was in existence at the time you bought the business from your predecessors? A. I couldn't say.

Q. Have you ever tried to find the balance of this contract, which is signed by Harold Harris—the date apparently is not on this one page—but witnessed by—Anthony V. Valaitis, E. C. Jamison?

A. In answer to your question, when we were negotiating this contract we were not able to get the contract from a prior year, that is, the corresponding copy of it here.

Q. Let me put it another way: were there any representations made to you that this contract, or the balance

(Testimony of James Cummins)

of this contract outside of the one sheet, was lost prior to the time you took the business over?

Mr. Beardsley: That is objected to as hearsay.

The Court: Well, I will permit it. [215]

The Witness: I don't quite understand the question.

The Court: Repeat it, Mr. Bargion, and I think the witness will understand it.

(Question read by the reporter.)

A. Yes.

Mr. Moore: May I ask that this additional sheet be marked either for identification or be placed in evidence? It is an incomplete document.

The Court: It can be marked for identification. If you find the balance of it—I don't know how we could just put in part of it.

The Clerk: That will be Defendant's Exhibit F for identification.

Mr. Moore: That is all.

Cross Examination

By Mr. Beardsley:

Q. Mr. Cummins, do I understand that you people from the Market Street Company came in as successors of this company in October of 1944, that you never had a copy of the contract under which you did work for the Navy from that time until June 30, 1945, other than this one sheet identified as Exhibit F?

Mr. Moore: We so stipulate, counsel.

Mr. Beardsley: I do not want you to stipulate. I want [216] the witness' answer.

(Testimony of James Cummins)

Mr. Moore: All right.

A. Well, I don't want to be evasive, Mr. Beardsley. That, I know, was part of the original contract. We knew under what rates we were operating on. A copy of that or a copy of that full complete contract is on file at the Navy and is a public record.

Q. By Mr. Beardsley: You could get it and bring a copy here easily, couldn't you? A. Yes.

Q. Isn't the same thing true for each of the prior years, that copies of the Navy contracts are available, certified or otherwise, that you could bring them here?

A. Yes. Under subpoena, I imagine it could be done. I know it is a record in the Navy.

Q. You knew what the terms of your contract were from the period of October, 1944 to June 30, 1945, didn't you? A. Yes.

Q. How did you find out?

A. Well, we knew there was work had to be packed and crated, had to be picked up at the house. The personnel who were employed by our company were still with us. Mr. Harris, who had the company for many years, was still working there. I did not go up and read the contract in every minute detail to see that we used six-inch nails; or, in other words, we just [217] came in and took over the business and continued on operating it.

Q. Did you lose about half of the amount of the Navy contract when you negotiated this new one which you introduced in evidence as Defendant's E?

The Court: Is that material?

Mr. Beardsley: Yes, your Honor.

The Court: In what way?

(Testimony of James Cummins)

Mr. Beardsley: I think it goes to the volume of Navy business in the year before and the year after. I am informed that they had about half—

The Court: Go ahead.

Mr. Beardsley: Half of the business after that time that they had before.

The Court: But the contract itself would not in any way indicate the volume of business. The Navy would give them a contract to pay them so much for such and such work; but the contract itself would not specify, because the contract is made for the year together, and there is no one would know at the time the contract was signed how much work or how much crating was to be done in the year to follow.

Mr. Beardsley: If I correctly understand the fact, there was a good deal more work under the earlier contract, and that so-called typical month is the first month under this new contract which, if I am correctly informed, is of much [218] narrower scope. If that is true—I do not know that it is true—if it is true, it seems to me to be kind of material.

Mr. Moore: I think your interpretation of the evidence is incorrect, Mr. Beardsley, because for the period of July, 1945 the Government business was \$108,000 for a six-months' period as compared with \$60,000 and \$67,000 for two preceding six-months' periods.

Mr. Beardsley: But my question is whether you did not lose to Bekins or some other company a substantial part of the Navy business which you had under the earlier contracts?

The Witness: Well, I would say we lost to Bekins—

(Testimony of James Cummins)

Mr. Moore: Just a moment. I am going to object to that as being immaterial, irrelevant and not within the issues.

The Court: I do not believe it is. Sustain the objection.

Mr. Beardsley: That is all.

The Court: That is all. Call your next witness.

Mr. Moore: May I have the privilege of that Navy Manual, Mr. Clerk? At this time, your Honor, we would like to offer into evidence the excerpt from the Navy Manual read in connection with the contract which is now in evidence, particularly those portions of the contract which refer to the right of the individual. Paragraph F on page 17 provides:

“The contractor shall reimburse the owner for any damage sustained to effects due to improper performance of packing or draying.” [219]

As a third party beneficiary to the contract made for the benefit of the Navy personnel, or if not a direct contract for their benefit and the Government being their agent, by the various regulations of the Navy providing for the payment to the movant claims and the right of the Navy personnel in connection with their household effects in accordance with the contract.

The Court: Proceed.

Mr. Beardsley: May I be heard on that, if the court please?

The Court: No. No; it is just a matter of evidence.

Mr. Moore: May we at this time offer the manual subject to being withdrawn, on the Household Effects section, as Defendant's next numbered exhibit?

Mr. Beardsley: You are offering those sections you have enumerated before, I assume?

Mr. Moore: We are offering the "Shipment of household effects" running from section 1870 through section 1881.

The Court: In evidence.

The Clerk: That will be Defendant's Exhibit D in evidence.

Mr. Moore: At this time, your Honor, subject to the ruling of the court as to whether any additional periods may be desired for the court's examination, we should like to submit the matter of the service institution or service [220] establishment exemption, and either at this time or at a later time argue the matter or submit briefs on it in accordance with the evidence and facts which were presented this afternoon.

The Court: Other than that, is your evidence all in?

Mr. Moore: Other than the argument on our evidence on the issue of the service establishment, it is in.

The Court: You have other evidence you want to submit?

Mr. Moore: On other defenses, depending upon the plaintiffs' case. But I mean out of order.

The Court: All right; go ahead.

Mr. Beardsley: Do you want this matter argued now, your Honor?

The Court: No, no. I want this case tried, fully tried.

Mr. Beardsley: Very well, your Honor.

Mr. Graham, would you come up?

EARL GRAHAM,

a witness called by the plaintiffs, being first duly sworn,
was examined and testified as follows:

The Clerk: Your full name?

The Witness: Earl Graham.

Direct Examination

By Mr. Beardsley: [221]

Q. What is your present residence address, Mr. Graham? A. 6623 Priam Drive.

Q. P-r-i-a-m? A. That is right.

Q. Los Angeles? A. Bell Gardens.

Q. Were you at sometime employed by the defendant, Coast Van Lines? A. Yes, sir.

Q. What was the period of your employment?

A. October, 1941 to November, 1944. [222]

* * * * *

Q. What were you doing? What were your duties?

A. Well, I was loader, unloader, packer, unpacker, uncrater; in fact, everything of the business, with the exception of crating, under driver's salary.

Q. Were you driving?

A. I drove some of the time; yes, sir.

Q. What sort of driving did you do, on what sort of truck?

A. Well, I drove all the trucks, pickup, bobtail, semi, at different times.

Q. Were you what is called a line driver between cities? [223] A. No, sir.

Q. At any time? A. No, sir.

Q. Was your driving all local driving?

A. All local, unless Long Beach is considered.

(Testimony of Earl Graham)

Q. How frequently did you drive to Long Beach?

A. Oh, at one time I used to drive there about three days a week.

Q. And for how long a period of time was that?

A. About four months.

Q. And in what year? A. That was in 1942.

Q. Was that before or after August 19th?

A. That was after August 19th,—well, about two months before and about two months after.

Q. With the exception of the two months immediately after August 19th, 1942, your driving was strictly local, not even to Long Beach, is that correct?

A. Well, in November of '42 I went to Long Beach to work. I drove my car from here there and worked from Long Beach.

Q. From November of '42 until when?

A. Until February of '43, around the middle of February.

Q. Now, do you have in that book before you an [224] indication of when you last worked, or does that cover the period up to your last employment?

A. Just a moment. Yes; this covers from October of '42 until November of '43.

Q. What was the last day you worked?

A. I can't give you the exact date, but it was the first week of October.

Q. You just said "November." Do you mean November, now, or October when you finished work?

A. I finished work in November. On November the 4th that terminated my work at the Coast Van Lines entirely.

(Testimony of Earl Graham)

Q. Were your duties during the time you worked at Long Beach substantially the same as those you have outlined in Los Angeles? A. Well, yes, sir.

Q. Did you have any means of observing what of the goods that you handled, what the destinations were of the goods which you handled in this occupation?

A. A lot of them; yes, sir.

Q. What was it you could observe about them?

A. Well, I observed that some were shipped to Great Lakes Naval Station, some were shipped to Washington, D. C., some were shipped to New York City, New York, and South Carolina, Virginia—in almost every state of the Union.

Q. Were you able to form any estimate of the [225] percentage of the goods which you handled which traveled into other states?

A. Why, from Long Beach, 100 per cent.

Q. Will you explain why that was true?

A. That was total Navy work. There was no local work connected with the Long Beach office whatsoever.

Q. What about the percent when you were in Los Angeles?

A. Well, the Los Angeles firm at that time were farming their local work out.

Q. What do you mean by that?

Mr. Moore: I move that be stricken.

Mr. Beardsley: Just tell us what you mean, Mr. Graham.

A. Well, I mean by farming it out that they did not have enough equipment to handle the Naval work and the local work, too; so they would either give—I don't know what they did—but, anyway, they turned it over to an-

(Testimony of Earl Graham)

other company to be done by that company. That is the local work.

Q. What is your observation as to the percentage of the work which was interstate, going into other states or coming into California from other states, which you handled while you were in the Los Angeles location?

Mr. Moore: To which we object on the ground he is incompetent to answer. [226]

The Court: Is it pertinent what was shipped in from other states?

Mr. Beardsley: That is interstate commerce, I believe, if the court please.

The Court: Then, if it is, every retail establishment in this city is interstate commerce, everyone of them.

Mr. Beardsley: I think that is not correct, your Honor. I think the establishment which handles goods coming from outside to the receiver inside while they handle it in the state are in interstate commerce.

The Court: All this business is in interstate commerce, if you are charged with goods and merchandise that the shipper does not put into interstate commerce, whether it is shipped to him or not.

Mr. Beardsley: Coming in through interstate commerce this company handles them and brings them to the receiver here.

The Court: Brings them in here.

Mr. Beardsley: Yes; that is interstate commerce.

The Court: Then all these retailers are in interstate commerce.

Two o'clock on Monday.

Mr. Beardsley: All right.

(Whereupon, a recess was had until 2:00 o'clock p. m., Monday, October 28th, 1946.) [227]

LOUIS KANIR,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Louis Kanir.

Direct Examination

By Mr. Beardsley:

Q. Mr. Kanir, what is your residence address?

A. 2912 Ocean Drive, Manhattan Beach.

Q. Were you at some time employed by the defendant Coast Van Lines? A. I was.

Q. What was the date of your going into that employment?

A. Well, on or about the 1st of April, 1942, until [231] March, possibly around the 6th, I think, 1946.

Q. You were employed continually during that period?

A. Continually during that period, yes.

* * * * *

Q. What were your duties?

A. I was a warehouseman. [232]

* * * * *

Q. Were you at any time engaged in driving or working— A. No.

Q. Or working on a truck? A. No, no driving.

Q. Did you have any means of knowing as to the goods on which you worked in the warehouse, whether they were under Navy Contract or otherwise?

A. Why, the biggest majority I would say—

Mr. Moore: Just a moment.

(Testimony of Louis Kanir)

Q. By Mr. Beardsley: Did you have any way of knowing whether they were or not?

A. Only what I could tell was by the name on the crates.

Q. How would that show?

A. It would be "U. S. Navy."

Q. So you could tell from that what the goods were—whether Navy or otherwise? A. No. [233]

Q. I don't mean what was—what they were, but they were Navy contract?

A. I could not tell what they were—Navy contract or what they were, no.

Q. You couldn't tell?

A. No, unless I examined each one closely and looked for it. I didn't have time to do that.

Q. Did you have an opportunity to observe whether they were goods which were moving between states or not?

A. No, I did not—never got hold of the papers on that.

* * * * *

Cross Examination

By Mr. Moore: [234]

* * * * *

Q. By Mr. Moore: Can you give us a typical operation of that type? A. Why—

(Testimony of Louis Kanir)

The Court: Counsel, just a moment. This is just cumulative, cumulative of all the witnesses who have been on the stand. I think the court can take notice that when a van backs up to a warehouse somebody takes the merchandise off of the van and puts it on the platform and either by hand or otherwise takes it inside and stores it some place in the warehouse.

Now, if there is anything else you want to develop you may, but when you ask what a typical operation is in putting goods in a warehouse it is cumulative. If there is anything else you want to develop, counsel, you may do so.

Mr. Moore: If it is understood this man unloaded the trucks and put the merchandise in the warehouse that is satisfactory.

The Court: Certainly. He says he was a warehouseman. That was what he did. He said he wasn't a teamster and never did any driving. [235]

* * * * *

Q. By Mr. Moore: Was the merchandise which was stored in the warehouse where you worked to be shipped out? Did you also engage in loading it onto the trucks as it left the warehouse?

A. I never did any loading. All I did was bring it downstairs and the trucks would load it themselves. [236]

* * * * *

THOMAS P. REMUS,

called as a witness by and on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Thomas P. Remus.

Direct Examination

By Mr. Beardsley: [237]

* * * * *

Q. Now, what was the work which you did—what were your duties when you went to work there? [238]

A. I done all the weighing and stencilling.

Q. At what place?

A. At 423 East 3rd Street.

Q. Did you continue in that same employment during all of the time you were with the company?

A. Yes, sir.

Q. Were you at any time operating away from the place of business there—that is, out on trucks or anything of that kind?

A. No, sir.

Q. Did you have any means of observing what proportion of the goods you worked on or handled were Navy goods, under the Navy contract? Was there any—would you know about that?

A. Yes, sir.

Q. What was the way you would know?

A. Well, all—in fact, the biggest majority of it was all the crated stuff that was sent out was Navy because you had a—you had to get the Navy papers to know where it was being shipped at.

Q. You handled the papers at the same time you were dealing with the goods, is that correct?

A. If I didn't have it, why I got it from the Navy inspector.

(Testimony of Thomas P. Remus)

Q. And you say the biggest majority of the goods you [239] worked on were Navy goods, is that right?

A. Yes, sir.

Q. And did you know the destination of the goods also by reason of your job of stencilling?

A. Yes, sir.

Q. Can you say what proportion was interstate as between states as distinguished within California?

A. Well, I would say about 65 per cent was interstate—that is, between states. [240]

* * * * *

Q. Did you perform your customary duties of weighing and stencilling on that day? A. That is right.

Q. How many shipments went inside the state and how many went outside the state on that day?

A. I couldn't tell you.

Q. Was there any day during the time which you worked there that you can tell us that?

A. No, sir.

Q. Did you keep any records of shipments that went inside the state or shipments that went outside the state?

A. No, sir.

Q. Do you have any independent means, outside of your recollection, to verify the opinion which you have given? A. No, sir.

Q. Did you ever load merchandise or unload merchandise? A. That is crated merchandise in the car.

The Court: I don't think you have answered counsel's question.

The Witness: What was the question.

The Court: Read the question.

(Question read.)

(Testimony of Thomas P. Remus)

The Witness: Yes, sir.

Q. By Mr. Moore: What merchandise did you unload? [242]

A. The only merchandise I unloaded was the crated—crated stuff—crated Navy material. It was commercial stuff too that came in from different states.

Q. By Mr. Moore: What was it unloaded from?

A. Boxcars.

Q. Did you ever unload any from lip vans?

A. Unloaded lip vans from boxcars but not unloaded lip vans.

Q. Did you ever process furniture in the warehouse for preparation for delivery? A. No, sir.

Q. All of the observations which you estimated were based only upon the operations that you observed at the warehouse at East 3rd Street?

A. That is right.

Q. Did you ever have occasion to examine the way bills and determine whether a Naval officer was moving goods for his own account or for his account but contracted through the Navy?

A. Well, I only understood they were all moved by the Navy to a certain—they were allowed so many pounds and over that, why, it was on their own.

Q. Do you know whether or not any shipment that you ever handled was not—any shipment you ever moved which bore a Navy name was not under a Navy contract? [243]

A. I don't know.

JOSEPH SAVEDRA,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Joseph Savedra.

Direct Examination

By Mr. Beardsley: [244]

* * * * *

Q. What was your classification or what were your duties there?

A. I was hired as a crater—crated for three and a half months when the place burned down.

Q. Now, just a minute. That was at what place?

A. 423 East 3rd Street.

Q. And then after the place burned—

A. After the place burned I helped clean it up and then we resumed crating on whatever goods were not perishable. I don't know whether they were Navy goods or what they were that we were crating then.

Q. You say you don't know. Do you mean at any time or do you mean after the fire? [245]

A. After the fire. Before the fire we were crating Navy goods.

Q. 100 per cent or what proportion?

A. It wasn't 100 per cent, no.

Q. Do you have any idea what percentage?

A. No, sir, I don't.

Q. Was that your job all the time you worked there, crating? A. No.

(Testimony of Joseph Savedra)

Q. Then when did you change to some other classification?

A. I crated three and a half months and then I started helping on a truck.

Q. What sort of truck?

A. Van—on a line assignment, local packing and moving.

Q. And how long did you continue in those duties?

A. All the way through until July.

Q. Do you know whether the goods you handled while you were acting as a helper on the truck were Navy contract or otherwise?

A. Yes, they were Navy.

Q. All of them or substantially all of them?

A. Not 100 per cent but most of them.

Q. Do you have any way of knowing whether they were [246] goods traveling between states as distinguished from traveling within California?

A. Only by a way bill.

Q. Did you have any observation as to whether—what proportion of them were interstate shipments as compared with intra-state?

A. If an address meant anything that would be the only way.

Q. Do you know now what proportion of them were interstate shipments?

A. No, sir; I couldn't tell you what percentage.

Q. Just what were your duties as helper? Will you describe just what you did on the truck?

A. I packed.

Q. Packed dishes?

A. Packed dishes and bedding or whatever needed packing and then helped load.

Q. Was that loading for bringing into the warehouse?

A. Yes, sir.

Q. Was the loading for shipment between cities or between states?

A. It was loading for preparation for crating.

Q. You mean the goods were handled again before they went out from the Coast Van Lines' place?

A. They were handled in the crating room by the [247] craters to crate, yes sir.

Q. Your loading was to bring them into the place where they were crated? A. Yes, sir.

Q. And not on their way away from the Coast Van Lines? A. That is right.

Mr. Beardsley: That is all. You may cross examine.

Cross Examination

By Mr. Moore: [248]

* * * * *

Q. By Mr. Moore: Can you fix by any incident or happening in the year of 1944 the month that you started your employment with the Coast Van Lines?

A. Only by the contract that I signed—on what date and I don't know just when it was, whether it was April or May.

Q. What contract do you refer to?

A. That hired me as a crater, crating Navy goods.

Q. With whom was that contract signed?

A. Mr. Harris.

(Testimony of Joseph Savedra)

Q. Do you mean by that an application for employment?

A. Well, it was—I don't believe it was an application for employment because it was—it had all the dope about your draft board and everything like that and called for—sounded to me like a contract.

Q. What else did it provide?

A. Well, that I should stand—would be able to stand up to specifications as a crater—as a Navy crater. [250]

* * * * *

Q. By Mr. Moore: How many months did you act as a driver's helper?

A. Well, from the time that you say—the best recollection of my crating and the remainder of my time until I quit in June of 1945 which I guess would be about eight and a half months or nine months.

Q. How much time did you spend in cleaning up the place? A. After the fire?

Q. Yes.

A. Well, it wasn't very long because it was all burned down and they had salvage men and we were not cleaning up. We were doing what was salvageable. We were crating—we weren't cleaning it up. They had laborers cleaning it up. We were doing the crating of the salvage.

Q. Was that included in part of your three and a half months? A. No, that was after.

Q. How long did that take place?

A. About a month.

Mr. Moore: That is all.

Mr. Beardsley: That is all. Witness excused [252]
Mr. Peterson.

GEORGE W. PETERSON,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: George W. Peterson.

Direct Examination

By Mr. Beardsley:

Q. What is your address. Mr. Peterson?

A. 2656 Benedict, Los Angeles.

Q. Were you employed at one time by Coast Van Lines, the defendant in this case?

A. Yes, sir. [253]

* * * * *

Q. What were your duties when you went to work there?

A. I hired out as a packer and then I drove from house to house picking up Navy goods and packing them and [254] listing them and taking them and hauling them into the warehouse.

Q. You say "on Navy goods." Was it exclusively Navy goods? A. All Navy goods.

Q. All under the Navy contract?

A. That is right.

Q. Did you do any driving or helping on any line truck—that is, trucks between the Coast Van Lines' place and any other city or state?

A. Just right in the city.

Q. Did you have opportunity to know the destination of the goods that you picked up and packed and brought

(Testimony of George W. Peterson)

into the warehouse, whether it was interstate or intra-state shipment?

A. They was all to be shipped—you had your Navy order stating on the order at the time where the goods was going but where they all went I don't know.

Q. Do you know what proportion of them went in interstate as distinguished from intra-state commerce?

Mr. Moore: Just a moment. There is no foundation laid. I object to the question.

The Court: Yes. you will have to lay a better foundation.

Mr. Beardsley: I think I asked him whether he knew, [255] if the court please.

Q. Do you know that now—Do you have any knowledge now about what proportion of the goods went in interstate commerce? I am not asking you what proportion went, but do you know what proportion went in interstate commerce?

A. Well, it was all for interstate.

Q. How do you know that?

A. It was marked on the Navy order.

Mr. Beardsley: Cross examine.

Cross Examination

By Mr. Moore: [256]

* * * * *

Q. Is there any day during your employment that you can tell us what merchandise you picked up and what its destination was?

A. Any day that I could tell you?

(Testimony of George W. Peterson)

Q. Any single day that you were employed by Coast Van Lines that you can tell us the various loads that you picked up and their destinations?

A. The only way I could tell you that, I would have to go to the Navy supply household goods and my name is on every slip that I picked up there. We made out five copies and the helper and the driver's name is on every one of them. That is the only way I can tell you and only by my time cards.

Q. You don't have any recollection of the destination of any of the merchandise which you delivered on any one day that you were employed?

A. (No answer.)

Q. Independent of reference to any other records?

A. That is all I know. I get the Navy order and I go out and pick it up and list it and take it and haul it in for shipment.

Q. I believe you testified on direct examination that all of your work which you did while you were employed as a driver, was under a Navy contract. Is that correct?

A. That is right.

Q. What do you mean by that? [257]

A. That is the only thing I worked under. I hauled strictly nothing but Navy goods.

Q. Where did you get the Navy goods?

A. We would get it from house to house. We would get it from the supply depot and take it from the warehouse to the supply depot.

Q. Did you ever deliver any?

A. Delivered a lot of it.

Q. And never in the period of time while you were employed as a driver did you ever complete any delivery

(Testimony of George W. Peterson)

or pick up any merchandise which was to be delivered within the State of California?

A. No. I picked it up at the supply depot and picked it up at the warehouse and delivered it. That was shipped into the warehouse and the goods I picked up would be from the supply depot.

Q. Then you don't know what the destination of these articles was that you either picked up or where they were to be delivered, did you?

A. Well, when we pick up an order we deliver it, yes.

Q. All right. Did you deliver it outside of the state?

A. No, not outside of the state.

Q. All right. Do you know where those orders originated from or the merchandise originated from?

A. I don't know where the merchandise originated from [258] but the orders came from the supply depot.

Q. You don't know where that particular load which you delivered to somewhere in Los Angeles area had originally come from, do you?

A. It was shipped in—

Q. Did you ever receive a shipment from Vallejo or the Navy office in San Francisco?

A. Well, I don't remember.

Q. Well, is it still your opinion that all of the merchandise which you handled was in interstate commerce?

A. It was shipped in and shipped out.

Q. You mean out of Los Angeles?

A. It was shipped in from all parts of the country.

Q. Including other parts of California?

A. Well, it could come from the northern part of California or it could come from any place.

(Testimony of George W. Peterson)

Q. Well, is it still your opinion that all of it came from without the State of California?

A. Well, our orders came from all over. I couldn't tell you that—where they come from, but they was interstate shipments.

Q. May I ask you what you mean on direct examination when you said that all of the deliveries or pickups which you made were in interstate commerce?

A. It was either leaving the state or coming into the [259] state.

Q. Upon what information do you have or do you base that all articles which you delivered came from without the state?

A. I don't remember any of them.

Q. You don't know?

A. When I worked for them they didn't do any interstate.

Q. What word is it you are using there?

A. I mean they didn't have the contract to move that in here.

Mr. Moore: Will you read the last answer?

(Answer read.)

Q. By Mr. Moore: Mr. Peterson, did you ever in the course of your driving for the company pick up a lot of household goods at one of the warehouses and take it out of storage and deliver it to some residence in this area?

A. I did not.

Q. Did you ever bring in a shipment from some individual's home for storage in one of the warehouses?

A. Well, could be for storage awaiting for shipment.

Q. Well, I asked you whether you ever did or not?

A. Well, I didn't know. My bills called for some other place. [260]

(Testimony of George W. Peterson)

Redirect Examination

By Mr. Beardsley:

Q. I did not understand your answer. You said when you worked for them they did not have a contract for interstate. Is that what you said?

A. Well, they didn't do any hauling. I don't know how you—

Q. Will you just explain what you meant by that answer? You mean they didn't send—

The Court: Let the witness explain his answer.

Q. By Mr. Beardsley: Explain what you mean by that answer.

A. Well, when I worked there we didn't—they didn't have the contract to haul it from house to house. We would pick it up—nothing only for shipping.

The Court: What did you do? What did you actually [261] do? That is the question the court is interested in.

The Witness: Well, I packed and crated or—not—I mean packed, listed and tagged.

The Court: Listed what?

The Witness: Listed all the household goods.

The Court: What do you mean?

The Witness: And hauled it into the warehouse.

The Court: What do you mean by "tagging" it?

The Witness: We tagged every piece that went in when we load it. We go out and pack the dishes, pack the bedding and we would list and tag each item like if that was a glass, we call it a glass, and if it is a chair we call it a chair and rug.

The Court: That is what you mean by "tagging"?

The Witness: That is tagging. We tag each piece that went in for shipping.

(Testimony of George W. Peterson)

The Court: Now, what do you mean by "shipping"? Did you have anything to do with shipping?

The Witness: No, sir.

The Court: What do you mean by that?

The Witness: Our order called for that. We pull it into the warehouse.

The Court: What would the order call for?

The Witness: Well, the order called for that—the goods—it would show they were to be shipped to Washington [262] or New York or whatever it called for.

The Court: Did you handle those orders?

The Witness: I handled the Navy orders and it was signed.

The Court: All right, proceed if there is any further questioning.

Q. By Mr. Beardsley: Where did the Coast Van Lines control or have possession over the goods—

The Witness: At the warehouse.

Q. And what would they go into from there?

A. They would go into the crating department.

Q. And then where did they go?

A. I don't know. I don't know where they would go.

Q. You spoke of an order for Washington, D. C. By what means would it go from here to Washington, D. C.?

A. They would get it ready and ship it out.

Q. In what? A. Well, ship it in carload lots.

Q. Did the Coast Van Lines send any of its vans across the state line into other states at the time you were working there? A. No, they didn't. [263]

(Testimony of George W. Peterson)

Recross Examination

By Mr. Moore:

Q. Upon what information do you base the fact that Coast Van Lines had no contract to do anything but Navy work while you were employed with them?

A. I said on the Navy work that I hauled them—they could have contracts with somebody else but I just worked only hauling Navy stuff. I didn't do no commercial work. I didn't haul any other goods.

Q. Well, is it your opinion that the Coast Van Lines had or did any other business besides Navy work during the time you were employed there?

A. They could have done a lot of business but they didn't—not on my work that I hauled.

Q. You don't know what they did, do you, outside of what you particularly carried yourself?

A. They didn't do any van and hauling.

Q. How do you know that?

A. Well, because I would have been in on it if they did.

Q. Well, you didn't do it, that is what you are saying, that is what your conclusion is, is that correct?

A. Well, I don't think any of them done it up to that time.

Q. I did not ask you that. Did you do any? [264]

A. I didn't do any of it, no.

Q. Did you ever see any contracts that the Coast Van Lines had? A. (No answer.)

Mr. Moore: Will you read the question?

(Question read.)

The Witness: I never seen no contracts.

(Testimony of George W. Peterson)

Q. By Mr. Moore: Do you know what Zone 1 is in the terminology of the packing business in Los Angeles?

Mr. Beardsley: That is objected to as not proper cross examination and no foundation laid and is calling for a conclusion of the witness.

The Court: Objection sustained.

Q. By Mr. Moore: I show you a contract of the Coast Van Lines and ask you to examine that.

Mr. Beardsley: That is objected to. This is a packer and not a lawyer, if the court please.

Mr. Moore: He has had wide latitude in what he said as a packer, I submit, Mr. Beardsley.

The Court: What is the point you want to bring out?

Mr. Moore: The man said there was no contract which allowed Coast Van Lines to handle intra-state movements.

Mr. Beardsley: No, I am sure he did not testify to that. He said he never saw any contracts. He said he never worked on anything but Navy work. [265]

Mr. Moore: And that was all out of the state.

The Court: Well, ask him that, Mr. Moore, and clear it up.

Q. By Mr. Moore: Do you know from any inspection you ever made of any documents of the Coast Van Lines that they did not, or did not while you were working there, have a right to engage in intra-state shipments, which means from one point to another within the City of Los Angeles?

Mr. Beardsley: That is objected to as not being within the issues and not proper cross examination.

(Testimony of George W. Peterson)

The Court: I will let him answer the question.

The Witness: I don't know nothing about that but I know that I—I do know that I didn't handle any of it and I didn't see none of their contracts.

Mr. Moore: That is all.

Mr. Beardsley: That is all. Step down, Mr. Peterson.
Mr. Vaughn.

LOUIE VAUGHN,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Louie Vaughn. [266]

Direct Examination

By Mr. Beardsley:

Q. What is your residence address, Mr. Vaughn?

A. 3135 Larga Avenue, Los Angeles.

Q. Were you at some time employed by Coast Van Lines, the defendant in this case?

A. Yes, sir. [267]

* * * * *

Q. Now, in what capacity were you employed and tell us what your duties were?

A. When I first went to work for them I was on what [268] they called cross-country truck.

Q. How long were you on that?

A. About a month and a half or six weeks—six or eight weeks to the best of my knowledge. I don't know for sure.

(Testimony of Louie Vaughn)

Q. Did your employment on that cross-country truck terminate before or after August 21st, 1942?

A. Before.

* * * * *

Q. By Mr. Beardsley: What next did you do after you left the cross-country truck assignment?

A. I went in as a packer.

Q. How long did you continue in that employment?

A. Until I quit there December 22nd, 1945.

Q. In other words, all the time between August 21, 1942 and the date you left you were a packer?

A. That is right.

Q. Now, will you tell us just what those duties consisted of?

A. Well, a good many of the times we had what we call little packing trucks there. [269]

* * * * *

A. What we had most of the time was a small truck, what they called the packing truck. We would load that with empty boxes and barrels and go from there out to a job and pack it. The larger truck came around and followed us and picked it up. Now, that is most of the time we did that. Sometimes, why, we would ride the large truck—ride in the back end of it. They would take us out to the job part of the time.

Q. By Mr. Beardsley: What did you do out there at the place where you picked up the goods?

A. Well, we done all the packing—packed all the bric-a-brac and dishes—that is, most of the time. Now, some of that was not household goods. We didn't always pack household goods. I remember one large contract we

(Testimony of Louie Vaughn)

had—I don't know exactly how big it was, that we were over there several days and packed moving picture cameras from the Navy Department over here at the Water and Power Building—packed out different literature and stuff that they sent out—campaigns for enlistment for aviators.

Q. Do you know what your work—what proportion of your work was on Navy contract?

A. Well, I would say about one job in 20—why, we would get for something, some kind of packing. I wouldn't know what it was—just household packing. Wouldn't be a [270] Navy order on it.

Q. What about the 19 out of 20?

A. Well, it was all Navy.

Q. 19 out of 20?

A. Yes, that is my best estimate.

Mr. Beardsley: That is all. Cross examine.

Cross Examination

By Mr. Moore:

Q. Did you drive or ride on the right-hand side of the cab of that small truck you are speaking of?

A. Well, if I went on the small truck I done most of the driving.

The Court: Is that material?

Q. And someone ride with you?

A. Yes. Well, no, not always. A lot of times I was by myself—nobody with me.

Q. Did you have someone as a rule with you over 50 per cent of the time? A. I think so, yes.

Q. Was it usually the same man?

A. That is right.

(Testimony of Louie Vaughn)

Q. His name was Mr. White? A. No.

Q. Mr. Magnus? A. Yes.

Q. And you usually drove the truck and he rode with [271] you?

A. He was one of them, yes. He was with me a short time—not so awful long, though.

Q. Have you ever had a flat tire on that truck when you were out with it? A. Yes, sir.

Q. Who repaired it?

The Court: Is that material?

Mr. Moore: Your Honor, I would like to take occasion to go into it and I would like to submit to the court authorities and I will be glad to do so while we continue tests that the Interstate Commerce Commission in determining their jurisdiction over safety operations as to what these men do, whether or not they come within the scheduled provisions.

The Court: Well, it is very clear about that. There should not be even any dispute about it. It isn't what incidental work a man does; it is what the main work is that brings it under the ICC and that goes back to the safety of the conveyances. None of these men that I see are employed in providing for the safety of materials in interstate commerce by way of preparing the trucks. I have had that question argued before me at very great length, as to whether or not a man loading a truck in interstate commerce came under the provisions of the Interstate Commerce Act on [272] the theory that improper loading would make insecure the transportation of the vehicle.

Because a man gets out and pumps up a tire I do not think takes him out of one classification and puts him in

(Testimony of Louie Vaughn)

another. I will give you a ruling on it, Mr. Moore, so you can protect your record, to the effect that they are not under the Interstate Commerce Commission so far as the evidence goes at the present time.

All right, proceed.

Q. By Mr. Moore: What percentage of your time did you spend driving, Mr. Vaughn?

A. Well, let me see. I figure it would take me about an hour out to the job and back and my average would be about, say, 10 or 15 per cent of it would be driving. The rest of it would be spent on the job packing.

Q. How much of your time in loading and unloading?

A. I didn't do very much of that. I wouldn't know much about that.

Q. Any idea of what percentage of your time you spent in doing that?

A. I answered that. I don't think—I didn't do enough of it to know. I told you I just did the packing.

Q. On your way bills did you make a record of the amount of time that you drove and the amount of time that you packed? [273] A. No, sir.

Q. Did you ever supply the company with any record?

A. They used to ask about what percentage, yes.

Q. Was that put on the way bills?

A. I don't remember whether I ever put it on any of the way bills or not.

Q. Did the dispatcher usually ask that?

A. No—yes, I guess it was the dispatcher. I don't know. Somebody inquired about it there. I don't know who it was.

(Testimony of Louie Vaughn)

Q. What percentage of your time did you do packing?

A. (No answer.)

* * * * *

A. Well, about 75 or 80 per cent I imagine.

Q. Did you start in 1942 at a rate of 90 cents per hour?

A. I told you I don't know—I don't remember.

Mr. Beardsley: If you have the record I will be glad to stipulate to it, Mr. Moore. I believe the law is the employer is required to keep the record. We have tried to piece it out where these men had information or slips on the theory that your records were burned, but if you have them we will be glad to take your records. [274]

* * * * *

LEON THOMAS McCROSSEN,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows: [275]

The Clerk: State your full name.

The Witness: Leon Thomas McCrossen.

Direct Examination

By Mr. Beardsley:

Q. What is your residence address, Mr. McCrossen?

A. 5509 East 6th Street.

Q. Los Angeles? A. Yes, sir.

Mr. Beardsley: At this time, if the court please, I move for consent to amend the amended complaint to correct the spelling of the name of Leon McCrudden to Leon McCrossen. This error was made as the others were

(Testimony of Leon Thomas McCrossen)

from my attempt to read the writing of the man on his signed statement about his employment and I was in error as to the spelling.

The Court: The motion is granted. [276]

* * * * *

Q. Now, Mr. McCrossen, were you at some time employed by the defendant Coast Van Lines?

A. I was. [277]

* * * * *

Q. In what capacity were you employed?

A. I was employed as a packer.

Q. During all of the time?

A. Yes, sir. That is the man that goes out and packs dishes and bedding and personal effects in the house.

Q. Do you know whether the goods on which you worked were Navy contract orders? A. Yes, sir.

Q. Were they or were they not?

A. They were.

Q. All or substantially all?

A. Well, I would not say all but I would say what I worked on would be approximately, anyhow, better than 60 per cent that I worked on.

Q. Were you at any time employed on any line van—that is a van going between cities on any regular run?

A. No, sir.

Q. What sort of truck was it that you went out on when you went out to do this packing?

A. Well, a little Ford pickup for the first year or [278] so. All I done was taking the packing material out there and packing it.

(Testimony of Leon Thomas McCrossen)

Q. And after that, what?

A. After that a large truck called and picked it up. I went back to the office and got another order and went out on another job.

Q. What proportion of your time was in packing as distinguished from any other operation?

A. Well, now, that would all depend. You see, some jobs—you would travel a block or three blocks and sometimes you would travel two or three miles, but I would say that oh, from around 80 per cent.

Q. 80 per cent of your time was in packing?

A. Yes, packing.

Mr. Beardsley: That is all. You may cross examine.

Cross Examination

By Mr. Moore:

Q. Mr. McCrossen, if you had a packing order for two hundred pounds did you not bring that back with you on the Ford pickup truck when you returned to the warehouse?

A. Well, if I was packing for two hundred pounds—that would be very small—two hundred pounds. That would be practically one barrel and it would be very seldom. You see, I did nothing but pack. I will grant you that maybe there would be occasion once in a great while where, if I [279] had just one barrel, I would bring it back to the warehouse but most of my jobs that I was on were larger jobs.

(Testimony of Leon Thomas McCrossen)

Q. Suppose you had a thousand pounds to pack. Isn't it true you would put that on your Ford pickup and return it to the warehouse?

A. That would be very hard packing in those sixteen boxes, they call them, that run anywhere from 250 or three or four hundred pounds and packing them upstairs, for one man to load, pack them and bring them down and load them on and bring them in.

Q. No one else worked with you on the Ford truck that you operated?

A. Yes, sir. Once in a great while a man would go out to help me pack.

Q. How long would it take you to pack one barrel?

A. That all depends on what you are packing, whether your are packing very nice china or whether it is just rough goods. It runs anywhere from 20 minutes to 40 minutes to an hour or hour and a quarter. Maybe sometimes it is something fancy.

Q. You have three types of boxes—small, medium and large—that were used in the packing business.

A. Pardon me?

Q. I say, you used three types of boxes: Small, large or medium-sized ones? [280]

A. That is correct.

Q. How long did it take you to pack a small box?

A. Well, the small boxes were generally used for books and those can be packed in anywhere from 15 to 20 minutes.

Q. How long did it take you to pack a medium-sized box?

The Court: Counsel, are you getting anywhere at all with this? If it were a box that required only four articles I suppose that could be packed in five minutes. If

(Testimony of Leon Thomas McCrossen)

it is a box you could put two hundred pounds in I assume it would take a longer time. What is the point?

Mr. Moore: We would like the opportunity to question this man's credibility.

The Court: But it seems to me, gentlemen, that the court has some knowledge of the very commonest activities of an individual and when you ask a man how long it took him to pack a box I don't care what he says. If it is a five-pound box it did not take him 24 hours to pack it. I don't care what he says. If it is a two hundred pound box that is another element. Now, I do not see any reason, unless it is to be assumed that the court takes judicial notice of nothing, but a simple matter of packing a box and the questions that have been asked in this case about how long did it take you to drive to a certain place, I don't care [281] what the witness says. I know how long it should take to drive five miles or ten miles in a truck or in an automobile, approximately. I cannot tell you exactly, and no man living can tell you, unless he has made a record of it. It depends upon the fog, the traffic, the time of day and many other elements.

Frankly, gentlemen, I do not see that that is going to help the court any; but if there is something the court hasn't in mind I will be very glad to listen to the testimony. What was the last question?

(Question read.)

The Court: I don't know what a "medium" size box is. It depends on what he is packing. Just as he said, if it is china or valuable art he would have to use much greater care. If the medium-size box had nothing in it but two or three sheets and a couple of pillows I assume

(Testimony of Leon Thomas McCrossen)

it wouldn't take as long. That is what I am trying to get at.

Proceed, gentlemen.

Mr. Moore: May I then assume, your Honor, that from what has been said so far you feel it is unnecessary to pursue the question of the exception under 213-B, safety of operation of these men who have certain portions of their time devoted to driving, loading and unloading and packing? That is all that we are directing this particular examination to. [282]

The Court: I have permitted you to say what portion of these witnesses said their time was spent in driving and packing. I permitted that in every witness but now when we get into the detail of it, unless there is a specific factual situation given to the witness: "Assume you are packing a barrel of two hundred pounds of hand-painted china and glassware" and put all of those items in it that is one thing, but to say how long it will take to pack a medium-size box, in the first place I don't know what a medium-size box is and I don't know what the articles are to be packed in it, but I have permitted in every instance you to go into those things—as to how much time was spent in packing and how much in driving and I will still permit those questions to be asked in view of the theory of the defendant.

You may proceed.

Q. By Mr. Moore: What percentage of your time was engaged in loading and unloading your equipment from your truck, Mr. McCrossen?

A. I done very little of that.

(Testimony of Leon Thomas McCrossen)

Q. Can you estimate that as you have the time you spent in packing?

A. Well, the largest part of my time was spent in packing outside of driving. It would be very hard to estimate it exactly—tell you just what time it was.

Q. You cannot give us an estimation of the percentage [283] of your time you spent loading?

A. Well, as I told you before, I done very little loading and unloading.

Q. I didn't ask you how little you did. I asked you—you estimated, for example, the time you spent packing in answer to your counsel's question. You said approximately 80 per cent. What I would like to find out from you is what percentage of your time you spent loading or unloading?

A. Not over five per cent, I wouldn't say.

Q. What percentage of your time did you spend driving?

A. Well, maybe—that is hard to answer, too.

Q. I did not hear the answer.

A. That is hard to answer, too. It depends on the job you are going to, the distance you are traveling.

Q. Well, upon what information did you base your estimate of 80 per cent of your time in packing?

A. Well, I just figured about that. I would probably say the driving time might come to ten per cent, it might be fifteen per cent. It is very hard to say, to give you a definite answer on it.

(Testimony of Leon Thomas McCrossen)

Q. Well, then, your 80 per cent average for packing is not definite?

A. Well, it is very close to the time, I would say.

Q. Do you have any estimate you can give us on the [284] percentage of your time driving?

A. No, I can't.

Q. You have no estimate?

A. No definite estimate, no.

Q. Upon what information do you base your estimate of 80 per cent of it packing?

A. Well, you go out on a job and say it takes you five or ten minutes to drive to it and you are out there packing on a big job, which I was on the majority of the times, and you are there all day long. Then all you have got is your driving time back.

Q. Would you say it was the ordinary operation that you performed that kept you at one place packing all day?

A. Many a day I have packed in one place.

Q. Would you say more than 50 per cent of your time that you worked at one job packing all day with the exception of your driving time?

A. No, I would not.

Mr. Moore: That is all.

Mr. Beardsley: That is all. Mr. Holder.

R. C. HOLDER,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name. [285]

The Witness: R. C. Holder.

Direct Examination

By Mr. Beardsley:

Q. What is your residence address, Mr. Holder?

A. 1712 Maple, Los Angeles.

Q. Los Angeles? A. Right.

Q. You were employed by the defendant Coast Van Lines for some time, were you?

A. Yes, sir. [286]

* * * * *

Q. By Mr. Beardsley: Now, at what duties were you employed, Mr. Holder, when you went to work there on September 6th, 1943?

A. I was hired as a helper.

Q. And what were your duties as a helper?

A. Well, packing and unpacking.

Q. Were the goods which you handled goods under the Navy contract, or do you know? [287]

A. Yes, sir.

Q. What percentage of them?

A. Well, I handled 90 per cent Navy.

Q. Were you a helper on some sort of truck?

A. Yes, sir.

Q. What sort of truck? A. All kinds.

Q. Were you at any time on a line truck?

A. No, sir.

(Testimony of R. C. Holder)

Q. Doing interurban hauling? A. No, sir.

Q. Now, just state what kind of trucks you were on and doing what sort of work.

A. Pickups, bobtails and semi.

Q. Doing what sort of hauling or carrying of goods?

A. Packing and unpacking.

Q. I mean where were these trucks going? Between what places were they traveling?

A. In the vicinity of Los Angeles and Orange County.

Q. Were you ever employed in the warehouse?

A. Yes. [288]

* * * * *

Q. Where did you work, at what place?

A. In the warehouse.

The Court: The street address—where did you work?

The Witness: Well, I worked at 819 Maple and 1320 Margo.

Q. By Mr. Beardsley: What sort of places are those—those addresses? A. They are warehouses.

Q. Now, were you during all of the time of your employed by Coast Van Lines on trucks or were you at some time in the warehouse?

A. I was in the warehouse.

Q. How much of the time?

A. From, oh, January 5th, 1495 until July 18th, 1946.

Q. During that time what did you do—what work did you do? A. In the warehouse?

(Testimony of R. C. Holder)

Q. Yes.

A. Well, I piled furniture—what they called stacking furniture.

Q. What else?

A. Well, that is warehouse work, stacking furniture.

Mr. Beardsley: That is all. You may cross examine. [289]

Cross Examination

By Mr. Moore: [290]

* * * * *

Q. How long did you operate as a driver's helper?

A. I couldn't be exact as to how many months.

Q. That was at the start of your employment, is that correct? A. Sir?

Q. That was at the start of your employment? You started in that capacity? [295] A. Right.

Q. Can you estimate whether it was six months, one year, or two years?

A. Well, all of '43 I was helper; '44 up until October and I got hurt and then I was off three months, and then, of course, I was still on the payroll but I wasn't down at the job. January 2nd, 1945, I am pretty sure, I worked in the warehouse. I would not say how many months. Maybe two or three. And then I worked as a helper again up until September, I believe it was September or October in 1945, and the rest of the time I was warehouseman up until 1946, the 18th of July.

Q. In other words, your work as a driver's helper started in '43 and went through '44 to the time you were off for a short period? A. That is right.

(Testimony of R. C. Holder)

Q. And when you returned in January of '45 you operated as a warehouseman until the termination of your employment? A. That is right.

Q. As a driver's helper what percentage of your time did you ride in a truck? A. What percentage?

Q. Yes.

A. Oh, I could have been in one 20 per cent of my time.

Q. How much of your time would you spend loading and [296] unloading goods?

A. Oh, it could have been 20 per cent.

Q. What other duties did you perform by ratio of percentage? A. Packing and unpacking.

Q. How much of your time doing that?

A. Well, that would be 60 per cent.

Q. Your duties as a warehouseman consisted almost exclusively of piling furniture or unpling furniture within the warehouse? A. That is right.

Q. You didn't take it out anywhere and you didn't leave the confines of the warehouse nor did you load it onto trucks or do anything but pile it after it had been brought to the warehouse and unpile it in the warehouse and send it out?

A. That is right. I piled and unpiled it.

Q. How long did those things usually stay in the warehouse as an average?

A. Well, some of it would stay maybe 24 hours; some of it maybe would stay 60 days. Some of it is still there. I presume.

(Testimony of R. C. Holder)

Q. As a general rule, if it stayed 12 hours didn't it stay down on the loading platform or in the packing and crating department and wasn't put in the warehouse?

A. How is that, please? [297]

Q. I say, if it was held in the warehouse proper isn't it true it was left on the loading dock or in your packing and crating department rather than being put in the storage department of the warehouse?

A. Well, it would be set off in the crating department, yes.

Q. But it didn't come into your warehouse as such where you stored goods?

A. No. It came in at the same door but not in the same department.

Mr. Moore: That is all.

Mr. Beardsley: That is all. Mr. White.

NOBLE F. WHITE,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Noble F. White.

Direct Examination

By Mr. Beardsley:

Q. What is your residence address, Mr. White?

A. 831 South Maple.

Q. Los Angeles? A. Yes, sir.

Q. Were you employed by the defendant Coast Van Lines [298] for some period? A. Yes, sir.

* * * * *

(Testimony of Noble F. White)

Q. And what were your duties then? What was your [299] job? A. I was a helper on the truck.

Q. And during this second period of employment, beginning early in 1945, what was your rate of pay?

A. \$1.02½.

Q. And what was your job then? A. Helper.

Q. Same thing? A. Same thing.

* * * * *

Q. Now, what did you do as a driver's helper?

A. Well, packed and loaded and hauled it to the warehouse.

Q. Were you at any time employed on a line truck, a [300] truck going between cities or states?

A. No, sir.

Mr. Moore: I am going to object to that; where the trucks went within the city or without the city is not in issue as long as it was within the state.

The Court: Objection sustained.

Q. By Mr. Beardsley: Do you know whether the goods on which you worked in these periods of employment were goods being handled under the Navy contract?

A. Well, I don't know. The driver always took care of the bills.

Q. You don't know what per cent, if any, were under the Navy contract? A. No, sir.

Mr. Moore: Objected to. The witness testified he didn't know.

The Court: Yes, he testified he didn't know.

Q. By Mr. Beardsley: Or do you know the destination of the goods, as to whether they were intra-state or interstate shipments? A. No, I wouldn't know.

Mr. Beardsley: That is all. You may cross examine.

(Testimony of Noble F. White)

Cross Examination

By Mr. Moore:

Q. Mr. White, as a rule did you work with some other [301] man more or less nearly all the time?

A. Yes, sir.

Q. What is his name? A. Key.

Q. Whatever would be the nature of the duties performed by Mr. Key, you would assist him in doing those things? Is that the usual case? A. Yes, sir.

Q. What percentage of your time would you say you spent acting as a driver's helper?

A. Well, I would help him drive. I would drive some of the time and he would drive some of the time because we were both getting driver's pay, so whichever one wanted to drive, why, drove.

Q. What percentage of your time—what percentage of your normal operating day would you say you spent driving or sitting as a driver's helper?

A. I couldn't say.

Q. How much of your time would you spend packing or unpacking?

A. Well, that would be hard for me to estimate. I don't know.

Q. How much of your time would you spend loading or unloading?

A. Do you mean that would cover the whole time for a [302] day?

Q. Yes, an average day or an average week or average month. A. Or average job?

(Testimony of Noble F. White)

Q. Average period of time over which your type of operation would be fairly routine?

A. I don't know.

The Court: He doesn't know. Proceed.

Q. By Mr. Moore: Do you know any month during the time that you have been there on the second occasion from April of 1945 to the present, is there any month that was out of the usual that would not be a typical month's operation as far as you and your associate were concerned?

A. Well, I can't recall any special month. [303]

* * * * *

DAVID GARCIA,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: David Garcia.

Direct Examination

By Mr. Beardsley:

Q. What is your residence address, Mr. Garcia?

A. 1311 North State.

Q. Los Angeles? A. Los Angeles.

Q. Did you at one time work for the Coast Van Lines, the defendant in this case? A. I did. [312]

* * * * *

Q. Now, at what type of employment were you engaged—in what type of employment were you engaged?

A. Hauling freight, household goods, crated stuff.

(Testimony of David Garcia)

Q. Do you know whether or not the goods you were hauling were Navy contract goods?

A. They were. It was all Navy.

Q. Do you know whether or not they were moving in interstate commerce—that is, between states—do you know, one way or the other, about that?

A. Mostly local—local, around town. Riverside was [314] the farthest I made delivery.

The Court: You will have to talk louder so we can hear you. Do not be afraid of your voice. Read the answer.

(Answer read.)

Q. By Mr. Beardsley: You mean you did not drive further or travel further than out to Riverside, is that it?

A. Well, around Los Angeles and vicinity. The farthest that I ever went was Riverside.

Q. Did you have any knowledge about the destination to which these goods were going ultimately?

A. No.

Q. You don't know about that? A. No.

Q. Whether they were going across state lines or not?

A. No, I don't.

Q. You don't know? A. No.

Q. Or if they were goods being delivered do you know whether they came from places outside of California or not? Do you have that knowledge?

A. Well, yes, they came from out of the state into the San Pedro Naval Supply Depot. That is where we picked them up.

Mr. Beardsley: That is all. Cross examine. [315]

(Testimony of David Garcia)

Cross Examination

By Mr. Moore:

Q. Mr. Garcia, what information did you have that these goods came from out of the state?

A. Just a moment. I am sorry, I can't hear you.

Mr. Beardsley: Mr. Moore, the witness is quite hard of hearing. Would you care to approach the witness stand?

The Witness: I can't hear him.

Mr. Beardsley: He will come over near you, Mr. Garcia.

Q. By Mr. Moore: Mr. Garcia, what information do you have that the goods which you saw in San Pedro came from without the state?

A. What do you mean "without the state"?

Q. They came in from without the state I believe you testified.

A. Because I had an idea of that, because a parcel was marked from out of the state, say from New York or Chicago and so on.

Q. Everything that you handled?

A. Not everything.

Q. You don't know what percentage of the goods originated inside the state or which originated from outside the state, do you?

A. No, sir; I don't.

Q. What was your answer? [316]

A. No, sir; I haven't.

Mr. Moore: No other questions.

Mr. Beardsley: That is all. Step down. Mr. Wolf.

MORRIS WOLF,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Morris Wolf.

Direct Examination

By Mr. Beardsley:

Q. What is your residence address, Mr. Wolf?

A. 2646 Redondo Boulevard, Los Angeles.

Q. Were you at one time employed by the defendant Coast Van Lines?

A. I was. [317]

* * * * *

Q. What duties were you employed at—what duties were you rendering while with Coast Van Lines?

A. Crater, crater and packing mostly—mostly house packing.

Q. Did you drive a truck at all?

A. No. I think only on one or two occasions I drove a truck. I didn't have a truck license. I didn't continue doing it.

Q. Do you know whether the goods on which you worked were goods under Navy contract?

A. Mostly all Navy.

Q. Have you any means of knowing whether they were goods which were traveling across state lines?

A. Most all of it was going out of the state. Most of it was.

Mr. Beardsley: That is all. Cross examine.

(Testimony of Morris Wolf)

Cross Examination

By Mr. Moore:

Q. Mr. Wolf, did you ever keep any record of the merchandise that you handled to determine what percentage of it went out of the state and what percentage was retained in [319] the state?

A. That is something I really wasn't interested in. I know most all of it was all out of town—out of the state.

Q. Did you ever keep any record of the amounts that went into the state or out of the state?

A. No, sir. It wasn't our place to keep any record to that effect. We just went out and done the work just as we had it.

Q. Did you have anything besides your recollection to base your estimate upon?

A. No positive proof or how much of it went out of the state and which didn't. Nobody could tell that very well except the books, but to my recollection most all of it went out of the state. While working on the jobs we always knew what was going out and what was not going out and, like I said, most of it was going out across country.

Q. Was your work very much the same all the time you were there, the nature of your operations and things which you did?

A. Practically, yes, about the same. Just going out and do the packing.

Mr. Moore: That is all.

Mr. Beardsley: That is all. Mr. Wheeler. [320]

EARL NELSON WHEELER,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Earl Nelson Wheeler.

Direct Examination

By Mr. Beardsley:

Q. What is your address, Mr. Wheeler?

A. 1434 West 59th Street, Los Angeles.

Q. You were at one time employed by the defendant Coast Van Lines? A. I was. [321]

* * * * * * * * *

Q. Now, what change took place in your rate of pay in March 1944?

A. In March they got a new mechanic in the shop and I had a chance to be his helper and my wages was changed to 85 cents an hour.

Q. How long did that continue?

A. That continued to December when I quit.

Q. Now, before you became the mechanic's helper what sort of work were you doing the first part of the time you were employed?

A. I greased the trucks, filled the gas tanks every evening, checked the oil, and parked them on the lot and closed up.

Q. But you did not do any mechanical work, is that right?

Mr. Moore: Just a moment. I object to that as leading [322] and suggestive on direct examination.

The Court: Objection sustained.

(Testimony of Earl Nelson Wheeler)

Q. By Mr. Beardsley: After you became a mechanic's helper what sort of work did you do?

A. I helped the mechanic with all his mechanical work and I also kept gas in the trucks and changed their oil and taken them to the parking lot every evening.

Q. Do you know what proportion of your time was spent in mechanical work and what proportion in the other type of work you have described?

A. After I became helper mechanic from five o'clock on in the evening was the only time I spent gassing and checking oil and driving to the lot.

Q. Well, what proportion of the time were you doing that latter work?

A. That was only about 15 per cent.

Q. How late in the evening did you work?

A. Well, it varied. Some nights it would be seven o'clock. Some nights eight and nine o'clock. I stayed until the last trucks were in so they could be parked. Some of them I had to drive up into the warehouse where the shop was so the furniture wouldn't get wet if it was going to rain.

Q. What time were you going to work during this second period while a mechanic's helper? [323]

A. I went to work at eight o'clock in the morning.

* * * * *

Cross Examination

By Mr. Moore:

Q. Were your hours from eight to five or thereabouts when you started work in January of 1944?

A. In January to March they was from one o'clock in the afternoon until nine in the evening—that is, if all the trucks were in.

(Testimony of Earl Nelson Wheeler)

Q. One p. m. to nine p. m.? A. Correct.

Q. When those trucks came in from 1:00 p. m. to 9:00 p. m., did you ever replace a burned out headlight in them?

A. No, I never replaced a burned out headlight.

Q. Did you ever test the brakes or report the brakes as being faulty or needing adjusting?

A. No brakes, no.

Q. Did you ever make any brake adjustments during that period? A. Not until after March I didn't.

Q. Was it part of your duties from January to March, to report any mechanical deficiency which you found in the vehicles which you serviced? [324]

A. Yes. If there was something wrong I reported it if the driver didn't.

Q. Did you ever inspect the tires when they came in to see if they were either low or needed changing from the standpoint of the tread being worn?

A. Yes, sir. I checked for flats because I had to change them if they were flat.

Q. From March until December of 1944 your regular hours were, approximately, from eight to five?

A. That was the regular hours, yes, but I never got done until the last truck was in.

Q. During the day from eight to five did you use the tools of a mechanic and work with the mechanic on the trucks? A. Yes, sir, I had my own tools.

Q. Tell us the various types of work which you did upon the trucks?

A. We took the engines out of a lot of the Dodge cab-overs and rebuilt them and put them back in. Once we had to go to Wheeler Ridge and put in another engine

(Testimony of Earl Nelson Wheeler)

in one of the cab-overs that burned up; all brake repairs, changing the drums on the trailers that were broke or brakes that were worn out.

Mr. Moore: That is all.

Mr. Beardsley: That is all. Mr. Magnus. [325]

RICHARD MAGNUS,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Richard Magnus.

Direct Examination

By Mr. Beardsley:

Q. What is your address, Mr. Magnus?

A. 604 West 43rd.

Q. Los Angeles? A. Los Angeles.

Q. Were you employed by the defendant Coast Van Lines at some time? A. I was. [326]

* * * * *

Q. Now, at what type of employment were you hired—did you first go to work at? A. As a packer.

Q. And how long were you so employed?

A. Oh, approximately the whole length of time I was there.

Q. Were the goods on which you worked goods under Navy contract, do you know? A. All Navy.

Q. Do you know whether they were goods which were moving in interstate commerce or not?

A. Well, most of them were going out of the state.

(Testimony of Richard Magnus)

Q. What were your principal activities during all the time you were employed there?

A. Well, going out and packing up household goods.
Mr. Beardsley: Cross examine.

Cross Examination

By Mr. Moore:

* * * * *

Q. By Mr. Moore: Mr. Magnus, did you ever do any [328] driving while you were employed by Coast Van Lines? A. I did a little, yes.

Q. How much?

A. Oh, that would be pretty hard to say in rough figures.

Q. Did you ever do any loading? A. Loading?

Q. Yes. A. Well, I have helped load.

Q. Well, is there a difference in helping to load and loading?

A. Yes. If I were sent out to load then I would be loading for myself, but if I was out packing on the job and a truck come to pick up the load and we had difficulty, why, we would help them once in a while.

Q. Didn't you ever load articles on your truck and take them into the plant or the 'warehouse?

A. Oh, yes.

Q. Did you usually work in conjunction with someone else? A. Pardon?

Q. I say, did you work with someone else? Did someone else go with you on most of the work you did?

A. Well, I don't quite get the way you mean that.

(Testimony of Richard Magnus)

Q. All right. When you spent your time packing did [329] you go out alone or—

A. Well, I went—a lot of the times I went with somebody else. Mr. Vaughn was with me for quite a while.

Q. And did one of you act as the other man's helper?

A. Well, as a packer—not as a helper.

Q. Who drove the truck?

A. Well, the other fellow did for quite a bit, for the last nine months or so when I was with him. He was doing the driving.

Q. Did you ever do any of the driving?

A. Well, I did some driving.

Q. I believe you stated to Mr. Beardsley that all of your work was Navy business. You did no other work outside of Navy business?

A. Well, no, I would not say that exactly. I said the biggest part of my work was Navy business.

Q. Do you mean by that 50 per cent of it?

A. Oh, I would say more than that. I would say 75 per cent of it or maybe more than that yet.

Q. Did you ever keep any records of the work you did to determine how much of it was Navy or how much was not Navy?

A. No, no record.

Q. Your answer is no? A. No. [330]

Q. Did you have anything outside of your memory to base your estimate on?

A. Well, I haven't got nothing as far as having papers but the company has records of all the jobs I ever went on.

Q. Did the months run about the same work?

A. What did you say, sir?

(Testimony of Richard Magnus)

Q. Did the months—the months that you were there, did you do about the same type of work?

A. I imagine so, yes.

Q. In other words, there was no month that was any different in any particular in any other month you were there? In other words, you packed or drove or whatever you did at about the same ratio or extent during the various months?

A. You mean the whole period of time I was working there?

Q. No, I mean, for example, in the month of, say of July 1943, did you do about the same type of work that you did in July of 1944?

A. Well, as far as Navy work, yes.

Q. I mean as far as the classification of the duties which you were performing without regard to whether it may have been Navy or somebody else's job that you were handling, were your duties similar during the various months [331] you were there?

A. I can't make head or tail out of that.

Q. Was there any month that you did more driving or less packing or more loading and less driving, or would your duties be fairly steady throughout the period that you were employed?

A. Well, as far as, if I understand you right—I don't know whether I do yet or not. You want to know during the period I was there, the three years, did I do more driving or helping or packing. I did the most of my time packing as a whole, as an average.

Q. We understand that. Did each month that you worked there, did you do about the same thing that you

(Testimony of Richard Magnus)

did the previous month in relation to the type of duties you performed? A. I guess I did.

Q. That would be your best recollection?

A. I don't know exactly the way you put the question that I quite understand you.

Q. Will you describe the duties that you performed? Is there any month that you worked there that you didn't do that same type of duty?

A. Well, about—I guess one month in 1944 I made a few trips to Frisco when they couldn't get anybody else to drive, if that is what you mean by different of any one [332] particular month.

Q. All right. Outside of that month in 1944 would you say that all the other months you were employed that you did similar work from month to month?

A. Yes.

Q. Now, what percentage of your time would you estimate that you spent packing?

A. Oh, about 75 per cent or 80 per cent of my time.

Q. What percentage of your time did you spend loading and unloading?

A. Well, take it over three years I would say about five per cent.

Q. How much time did you spend driving?

A. Over the same period of years would be about 15 per cent. That is including the few trips I made to Frisco.

Q. How much of the time did you spend riding as a driver's helper?

A. I can't figure all these percentages out—driver's helper or packer's helper.

(Testimony of Richard Magnus)

Q. How about driver's helper?

A. I never was a driver's helper.

Q. Did you ever ride on the right-hand side of the cab?

A. Could have been a packer.

Q. I am asking you if you rode as an employee of the [333] Coast Van Lines on the right-hand side of the cab while somebody else was driving a truck?

A. I was sitting in the right-hand side, sitting in the helper's seat, if that is what you mean.

Q. Yes. Did you ever do that?

A. I can't figure out that percentage of time. It would all depend on where the truck was going to go. It might be going only two or three streets away. Might go a half a dozen or might go a dozen. It might be one per cent or might be two per cent.

Q. Well, would you say now it was two per cent?

A. Well, I wouldn't want to say because I am not sure.

Q. Do you have any records which you kept, Mr. Magnus, upon which you base these percentages of work that you did packing, loading, driving and driver's helper?

A. No.

Q. It is all in your memory?

A. That is right.

Q. You stated in answer to your attorney's question that most of the goods which you handled were going out of the state. Is that a correct statement?

A. That is what I said.

Q. What do you mean by that? Can you give us an estimation in percentages?

A. Well, every job that we—most of them that I [334] went on up in the corner said "U. S. Navy," and you had a number on it and we had to go out and pack

(Testimony of Richard Magnus)

and crate whatever we could do at the house and then it was taken in and sent down to the supply depot and the only record we could go by is what the Navy numbers was and if it was local work it was marked "Local moving job."

Q. You had no way of knowing whether they might be going to San Francisco, Alameda, Vallejo or other points where Naval personnel were in this state, or whether they might be going to New York or Washington, do you?

A. Well, the only way I can answer that, as far as my recollection goes, most of them jobs that went to San Diego or to Frisco, the driver generally went out and packed them and loaded them and took them right away. Most of the local packers that was packing Navy or any other things as a rule did not go out on those packing jobs. Occasionally they did, so as to a figure of percentage I couldn't even say whether I went on five or went on one.

Q. What type of a truck did you use most of the time?

A. Well, the last truck I was on was a small truck, what they call a packer's truck.

Q. What kind of truck—the name of it?

A. I believe it was a Federal.

Q. What kind of body did it have?

The Court: Is that material, counsel, whether it was [335] a Cadillac body or some other?

Mr. Moore: Was it a stake body truck?

A. Half a panel and a canvas top.

Q. What percentage of the jobs that you did under two thousand pounds did you bring back to the warehouse with you?

A. Oh, I would say very few.

(Testimony of Richard Magnus)

Q. What percentage of the jobs under one thousand pounds did you bring back on your truck to the warehouse with you?

A. Let us get this straight—two thousand pounds? I don't believe the truck would hold two thousand pounds if it was household goods. If we brought anything back it would probably be just a couple of pieces.

Q. Where the packing job was one thousand pounds what percentage of the one thousand pound jobs did you carry back on your truck with you to the warehouse?

A. You say the whole job was one thousand pounds?

Q. Yes.

A. And household goods in it, a couple of beds and dressers, is that what you mean?

Q. No. You said your work was that of packing.

A. Is the whole one thousand pounds just packing material, barrels and boxes?

Q. Yes. [336]

A. Well, you could take one thousand pounds back.

Q. What percentage of the jobs which you did of packing goods where there was one thousand pounds or less did you carry them on your truck to the warehouse?

A. Well, I would say one per cent of that question because most of the people have furniture with barrels and boxes.

Q. You say one per cent?

A. You mean just bring back packing material that we packed—that is, barrels and boxes and after we packed them did we bring them back into the warehouse?

Q. That is correct. A. One per cent.

Mr. Moore: That is all.

Mr. Beardsley: Just a moment.

(Testimony of Richard Magnus)

Redirect Examination

By Mr. Beardsley:

Q. Are you sure what month it was that you made these trips to San Francisco?

A. That is pretty hard. I believe I made one trip in 1945. I am not sure of that. And it was either October 1944—it is pretty hard. I can't recall them dates.

Q. But there were more periods than one during which you made some trips, or was there just one period during [337] which you made the trips?

A. There was one period in 1944 and I am not sure whether I made one trip in '45 or not. If I did it was in the early part of '45 or the latter part of '44.

Q. Now, in your examination by Mr. Moore you said something to the effect that if the household goods were going within the state, such as to San Francisco, the driver would usually take them direct or something to that effect. Will you explain that a little more fully?

A. Well, they had what they called long line drivers that specialized in going over the highway. We had one or two trucks, I think, that used to run to San Diego and about three used to run up as far as Frisco and they had a van line haul—pack and haul—that means go to the house and pack up the household goods and load the truck to go direct. I believe in the Navy contract it is specified they had to be loaded direct. I am not too sure about that.

Mr. Moore: I object to the last voluntary statement which is not responsive and calls for a conclusion.

The Court: It may go out.

(Testimony of Richard Magnus)

Q. By Mr. Beardsley: On that type of job would you do anything about it at all? Would a packer, such as you, do anything about a job where the line driver was taking it to San Francisco?

Mr. Moore: Object to that as having been answered. [338]

The Witness: Once in a while if they didn't have any good packer on the particular truck. They kept changing help. They would send out an experienced helper to pack that for that driver.

Mr. Beardsley: That is all.

Recross Examination

By Mr. Moore:

Q. Mr. Magnus, when you went out on a job and the entire load was less than one thousand pounds, including both packed goods and any other household effects, what per cent of those did you return with you on your truck to the warehouse?

The Court: What does that meet in the case?

Mr. Moore: Strictly impeachment, your Honor.

Mr. Beardsley: I object to that.

The Court: Sustained. Here is a man testifying from recollection and from memory. Suppose you do come in and show it was 12 per cent or 15 per cent? What has that to do with it? That is not impeachment.

Mr. Moore: Suppose it is 50 per cent.

The Court: Suppose it is.

Mr. Moore: Suppose it is 75 per cent.

The Court: Suppose it is 75 per cent, suppose it is 80 per cent.

(Testimony of Richard Magnus)

Mr. Moore: Then what this man's duties were as he [339] testifies to, according to his recollection, is immaterial if the records show it is contrary.

The Court: If the record shows that it is not binding on the witness. He is not telling you he knows what it is. He is just guessing. I consider that practically none of the cross examination has helped the court a bit. The man says, "I don't know; I am guessing." The court knows he doesn't know unless he has a record. He is guessing at it for you. If you want him to guess that is all right but it does not mean anything to the court.

Mr. Moore: That is all.

Mr. Beardsley: Mr. Charette.

ALBERT CHARETTE,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Albert Charette.

Direct Examination

By Mr. Beardsley:

Q. What is your residence address, Mr. Charette?

A. 848 South Gramercy Place.

Q. Los Angeles? A. Los Angeles.

Q. Were you at one time employed by the defendant [340] Coast Van Lines? A. I was. [341]

* * * * *

Q. By Mr. Beardsley: Now, at what type of employment were you hired at this company?

A. Packer.

(Testimony of Albert Charette)

Q. Did you have any other class of employment during the time you worked there? A. No, sir.

Q. You were a packer at all times?

A. Yes, sir.

Mr. Moore: I am sorry but I cannot hear the witness.

The Court: Speak more loudly so everybody can hear you.

Q. By Mr. Beardsley: Do you know what percentage of the goods you worked on were under the Navy contract? A. Yes, sir.

Q. What? [343] A. All Navy contract.

Q. Did you have any way of knowing whether the goods were goods moving in interstate commerce?

A. (No answer.)

Q. Had you any way of knowing that?

A. No, because everything goes to the warehouse and the office takes care of that.

Mr. Beardsley: Cross examine.

Cross Examination

By Mr. Moore:

Q. Were your primary duties a packer in the warehouse or at the residences? A. Residence.

Q. Do you have any records to base your estimate that these were all Navy contract goods which you handled?

A. Yes, sir; 95 per cent was all Navy.

Q. Do you have any records other than your memory?

A. I didn't keep no records for the Navy.

Mr. Moore: That is all. [344)

* * * * *

The Court: All right, proceed, Mr. Moore.

Mr. Moore: Call Mr. Diegel.

MAYNARD DIEGEL,

called as a witness by and on behalf of the defendant, having been previously duly sworn, testified further as follows:

Direct Examination

By Mr. Moore:

Q. Mr. Diegel, I hand you three photostatic copies of certain documents and what appears to be the original of the fourth, and ask you if you have ever seen these documents before?

A. Yes, sir; these are Navy contracts.

Q. Can you identify each of them for us?

A. This first one is contract No.—

Q. You say “the first one.” May I interrupt? You are showing me the contract numbered— [347]

A. N-244 s-31163.

Q. With a “copy forwarded” stamped in the upper left-hand corner, dated June 18, 1942?

A. Yes. That is when it was submitted for opening. It was for a period of time running from June or from July 1st, 1942, to June 30th, 1943.

Q. All right. This appears to be a photostatic copy and consisting of approximately nine pages—withdraw that. Consisting of a number of stapled pages, the back one being headed with the figure “4”, a numbered page, and says, “In witness whereof, the parties hereto have executed this contract as of the day and year first above written.”

(Testimony of Maynard Diegel)

Did you secure this from the Navy, or did you have a photostat made of it yourself?

A. Well, the Navy only had one copy of this so they sent a party from the purchasing office, an employee of the Navy.

The Court: I don't think there is any objection to the foundation.

Mr. Beardsley: No objection.

The Court: All right, it will be received in evidence.

The Clerk: Defendant's Exhibit G in evidence.

(The document referred to was marked Defendant's Exhibit G, and was received in evidence.)

Q. By Mr. Moore: Can you identify the next one as [348] another photostatic copy of a contract with the Navy? A. I can.

Q. Which is dated the 4th of June, 1943?

A. Yes.

Q. And that is a contract with the Navy Department that the Coast Van Lines had? A. It is.

Q. And which ran for a period of a year?

A. From July 1st, 1943—

Q. To? A. June 30th, 1944.

Q. And this is a photostatic copy of that contract?

A. Yes, sir.

The Clerk: Is it also admitted?

The Court: Yes.

The Clerk: Defendant's Exhibit H in evidence.

(The document referred to was marked Defendant's Exhibit H, and was received in evidence.)

(Testimony of Maynard Diegel)

Q. By Mr. Moore: The next one is dated the 1st of June, 1944. I ask you if that is a copy of the contract which the Coast Van Lines had with the Navy Department?

A. Yes. I secured this from the Navy, too.

The Court: Received in evidence.

The Clerk: Defendant's Exhibit I in evidence. [349]

(The document referred to was marked Defendant's Exhibit I, and was received in evidence.)

Q. By Mr. Moore: What is the next document you have?

A. This is a photostatic copy of the general conditions which are made a part of all three of those contracts.

Mr. Moore: We ask by reference this be made a part of each of the three preceding exhibits.

Q. And Mr. Diegel, this is a copy of similar provisions which are attached to each of the three contracts which you have offered?

A. Yes.

The Court: Received in evidence.

The Clerk: Defendant's Exhibit J in evidence.

(The document referred to was marked Defendant's Exhibit J, and was received in evidence.)

Mr. Moore: May we have made by reference also a part of the three preceding exhibits?

The Court: It is so understood.

Mr. Moore: No further questions.

Mr. Beardsley: No cross examination.

Mr. Moore: Call Mr. Cummins.

JAMES CUMMINS,

called as a witness by and on behalf of the defendant, having been previously duly sworn, was examined and testified further as follows: [350]

The Clerk: State your full name.

The Witness: James Cummins,

Direct Examination

By Mr. Moore:

Q. Mr. Cummins, have you knowledge of the permit which the Coast Van Lines—withdraw that.

Do you have knowledge of the permit of the Interstate Commerce Commission which the Coast Van Lines holds?

A. Yes, I have.

Q. Will you tell us what permits Coast Van Lines has or did have during the period from August 21, 1942 up to the present time?

Mr. Beardsley: That is objected to as not being the best evidence, if the court please, and also no foundation laid.

Mr. Cummins said he wasn't with the company until a date much later than the date counsel's questions refer to. It would call for a conclusion of the witness. Certainly the permits themselves would be the best evidence.

The Court: Well, do you have the permits?

The Witness: Yes, your Honor.

The Court: He does have the permits.

The Witness: May I take that back? I have reference to them, your Honor. [351]

Mr. Moore: We have a period, your Honor, in which this fire destroyed many things which occasioned our going to the Interstate Commerce Commission to get certified copies of records. This man, who was the secretary

(Testimony of James Cummins)

of the company, can tell what the Interstate Commerce Commission's office in Los Angeles says is the status of its records of permits which the company held.

The Court: Of course that would be purely hearsay and not the best evidence. With that objection confronting the court—

Mr. Beardsley: I have no objection to the proper records being put in at a later time if counsel wants to obtain them.

Mr. Moore: What records would you be satisfied with, Mr. Beardsley?

Mr. Beardsley: I have made no investigation, if the court please. I don't know what he is offering. It is perfectly clear that a statement made by an officer of the Interstate Commerce Commission is not proper evidence.

The Court: The court is confronted with that objection and has no alternative.

Mr. Beardsley: I do not want to impede Mr. Moore. If permits issued to this company are material in the case I shall not object to certified copies, certified by a proper employee of the I.C.C. I shall not require the employee to [352] be brought over here if they are properly admissible in evidence.

Mr. Moore: May I ask if the employee of the Interstate Commerce Commission, whose office is in this building, testifies from the record on file in their office, will that satisfy counsel?

Mr. Beardsley: Of course original permits could not be left here, I assume, and certified copies of any pertinent records will not be objected to on the ground there is no foundation laid for them. Certified copies I think are appropriate to prove anything that is a matter of record

(Testimony of James Cummins)

in a Federal agency of that kind. I shall not make any technical objection on that ground, on the ground that they are merely certified and not authenticated or something more formal.

Mr. Moore: A statement by an employee of the Interstate Commerce Commission's office, who will testify as to what the records in their office show, would not be acceptable?

Mr. Beardsley: I certainly object to what is now being offered to the court. I don't know how I can anticipate the form of the testimony that counsel refers to.

Q. By Mr. Moore: Mr. Cummins, since October 1944 have you had occasion to make studies of certain operations of the Coast Van Lines? [353]

A. Yes, I have.

Q. Would you state whether or not Mr. Reese here or other people assisted in the preparation of those?

A. In 1944 when we bought the company we were operating part of our business—part of our business was in connection with the Navy contracts. We were anxious to see where we stood financially—

Mr. Beardsley: Just a moment. I am going to object to this as not responsive to the question. The question is, did Mr. Retzer and other persons assist in the studies.

The Court: Objection sustained.

Mr. Beardsley: I ask it be stricken.

The Court: Listen to your counsel's questions Mr. Cummins.

The Witness: May I have the question again?

The Court: Read the question.

(Question read.)

The Witness: They did.

(Testimony of James Cummins)

Q. By Mr. Moore: Were those studies made under your direction? A. They were.

Q. Did they concern the handling of various types of operations of the Coast Van Lines?

A. Yes, they did.

Q. Will you tell us what the result of those studies [354] was?

Mr. Beardsley: Objected to as not within the issues of the case; no proper foundation laid and not the best evidence and immaterial as far as the question shows up to this point.

The Court: I think counsel can make it a little more specific without objection.

Q. By Mr. Moore: What particular ground, Mr. Cummins, did the series of studies cover? What was the first one that you covered?

A. Covered the cost of the individual services that were done to perform any one service of the Navy contract.

The Court: We are not interested in that.

Mr. Beardsley: And it is not within the issues, if the court please.

Q. By Mr. Moore: Did it disclose the time element involved and the work performed? A. Yes, it did.

Q. What were the other studies besides the first one?

A. Studies related to the cost of time that trucks were in operation to bring in household goods, varying in weight from 500 pounds to 10,000 pounds.

(Testimony of James Cummins)

Q. Were those based upon actual observation of the operations as such?

A. Yes, they were. The survey was supervised by [355] Mr. Retzer, who at that time was operating manager of our company.

Q. What other studies did you make?

A. We made further studies to determine how long it took to pack barrels and boxes, how long it took to handle a small shipment of 500 pounds or 1,000 pounds or 2,000 pounds, all leading up to a point of making it clear in our own minds if it would be—

Q. We do not care for what purpose or what you eventually did with the figures, whether Navy contract or otherwise. I just want to know what the studies made consisted of.

Now, with regard to the first study, referring to the small shipments, can you tell us what the analysis and result showed with the time factors involved and the operations of your personnel handling the shipments of 500 pounds or less of household goods to be packed and handled in the ordinary course of events?

Mr. Beardsley: That is objected to as not within the issues, if the court please, and not material.

The court: I will permit the question.

Mr. Beardsley: May it please the court, may I have an opportunity to ask one or two questions on voir dire?

The Court: Yes. [356]

(Testimony of James Cummins)

Voir Dire Examination

By Mr. Beardsley:

Q. Mr. Cummins, how closely were you associated with the making of this study about which you are now to testify? A. Very closely.

Q. Were you here in Los Angeles while it was being made?

A. A good portion of the time—not all of the time.

Q. Did you actually look at any of the original source material and note down— A. Yes.

Q. The answers to the questions you were pursuing or did Mr. Retzer supervise that and you have only indirect supervision over him because you were secretary of the company?

A. Well, I don't know what jurisdiction I had over him. I told him I wanted to have a study made of the cost of performing these different operations that we were conducting and I knew that some of them were not profitable and he did give me some figures which I did not agree with him and asked him to re-study them again.

Q. But he actually looked at the way bills or whatever the original source of materials were and reported to you what he found, did he not? You didn't go through the [357] bills one by one and make this report, did you?

A. Yes; we still have them.

Q. You say he did that or you went through the bills, the original entries or records and made the report? Mr. Retzer did it or you did it?

A. He was the one asked to make the report. I checked some of the figures he gave me and didn't agree with some of them and after checking them myself—

(Testimony of James Cummins)

Q. And then had him do it over, is that right?

A. Yes, if there was some point I didn't think was logical or right I asked him to recheck it.

Mr. Beardsley: Well, I make the further objection, if the court please, this witness is not the one best qualified to testify. It is a summary, apparently, of a report made from original materials by somebody else.

The Court: I think the objection goes more to the weight of it. Proceed.

The Witness: What was the question?

(Question read.)

The Witness: The conclusions that we reached in the handling of these shipments, and I am not referring particularly to Navy but to our private work as well, on our overall operation that it was not profitable for us to prepare small shipments for—

The Court: We are not interested in that at all. [358]

The Witness: I didn't answer it right. I know the answer to it.

Q. By Mr. Moore: What are the factors that went into your decision such as what was disclosed by your study as to the time it took to drive, load, unload, pack, unpack, load—

The Court: Just think of that question now and answer it the best you can.

The Witness: In other words, you want to know what our conclusion was as a result of the study that was made or what we had learned?

Q. By Mr. Moore: What did you find out from the study you made with relation to how much time it took for a man who was a packer to take his truck and go out and pack and load the merchandise on the truck and return

(Testimony of James Cummins)

the truck to the warehouse, unload the merchandise and complete the operation?

A. The conclusion that we reached on it was that where small shipments were involved it would be better and more profitable for us to have the packer go out in his truck, pack it, load it onto the truck, and bring it back into the warehouse. In other words, he would act in three capacities for that job and not as a packer particularly. He was a piece of everything.

Q. Now, just to go one step behind that. What led [359] you to that conclusion, Mr. Cummins? What study of the time element involved, how long did it take to do the component parts of the study which you made?

A. On smaller shipments the greater portion of the time or a goodly or substantial portion of the time was involved in a truck going from and to the job and it didn't pay us to do that.

The Court: We don't care about profits. We are not going into that. We are not going to examine the financial statement of the company.

The Witness: I know what I want to say.

The Court: You have answered counsel's question. Ask another question.

Q. By Mr. Moore: On the next larger shipments which you analyzed what did it show with regard to one thousand or two thousand pounds as to the time element divided between driving and loading and packing, unloading and return driving?

A. You want to get the conclusion again?

The Court: That is right.

Q. By Mr. Moore: That is right.

(Testimony of James Cummins)

The Witness: The conclusion we came to was that a particular type of truck which we had in our warehouse was best suited to handle shipments between one thousand and two thousand pounds and for that reason particularly or special [360] crews were assigned to that particular truck that would do the operation of going to the house, doing the packing, loading it, pack merchandise including what miscellaneous furniture there was and bringing it back to the warehouse and substantially we tried in our operation to confine it to that particular truck, to do that type of work. There were occasions, of course, when it wasn't done, but in the majority, as our records will prove, that was done.

The Court: Ask the next question.

Q. By Mr. Moore: In the case of one thousand pounds of merchandise what were the time factors that you found for each of the component elements of your customary operation?

Mr. Beardsley: That is objected to, if the court please. It doesn't appear that was one of the matters within the study and the same objection I made before, this man did not refer to the source material.

The Court: Well, I will see what he can do with it. Repeat the question.

(Question read.)

Q. By Mr. Moore: Did you have so many hours consumed for each one of these operations?

A. Yes.

Q. Can you tell us—did you make a summary of those? Did you arrive at a study that gave you an answer to those elements? [361]

A. Yes, we do have.

(Testimony of James Cummins)

Q. Well, what are they?

A. May I answer the question, your Honor.

The Court: It is very clear.

The Witness: This man will object to my answer.

The Court: Go ahead. I am the one taking care of that. You go ahead and answer the best you can.

The Witness: You want to know about a shipment between one thousand and two thousand pounds?

Mr. Beardsley: The question referred to one thousand pounds.

The Witness: One thousand pounds? Approximately, on a one-thousand-pound shipment, approximately 25 per cent would be consumed in driving time going to the job. Probably forty per cent or forty-five per cent in packing; five to ten per cent in loading and from that house he would go on to the next job so the driving time would not be the same as it was going out to the warehouse. In other words, he had a series of jobs for that particular day which our records will substantiate.

Q. By Mr. Moore: Now, do you have sample studies that were made on individual cases such as a pickup in a particular community, the job done and the time consumed in doing the various jobs?

A. Yes, we do have. [362]

Q. Can you give me one of those exact studies?

Mr. Beardsley: May we inquire whether they are prepared under the same conditions as stated before, or prepared for the purpose of this testimony?

Mr. Moore: The same conditions as testified to before.

Mr. Beardsley: Is that your answer, Mr. Witness?

The Witness: I haven't answered.

(Testimony of James Cummins)

Mr. Beardsley: These were not prepared for the trial but prepared in the early study by Mr. Retzer.

The Witness: Yes, sir; that is right. Now, can I answer the question?

Q. By Mr. Moore: Please, sir.

A. This is a typical shipment of 1300 pounds which was from Altadena, coming to the warehouse to be packed and shipped. The delivery of the materials, the preparation to go to work for two men was two and a quarter hours. The packing materials they took with them were two barrels and three large boxes. It took them one-half hour to do the listing.

Q. May I interrupt? The first item you gave, did that preparation—delivery of materials to residence, that means getting materials and going to the residence?

A. That is correct.

Q. The driving time?

A. Correct; the packing at the house for two men was [363] one hour. The loading at the—the tagging and listing of the loading was a half hour for one man loading at the residence and for two men was three-quarters of an hour. And the return to the warehouse of the packers and the van with two men was one and one-quarter hours. The unloading and checking at the dock was three men a half hour.

Now, I could continue on.

The Court: What do you mean by the “dock”?

The Witness: That is at the warehouse, your Honor.

The Court: The warehouse dock?

The Witness: Yes, sir.

Q. By Mr. Moore: Do you have any other sample studies made besides the one which you just referred to?

(Testimony of James Cummins)

A. Yes, sir; we do have.

Q. What is the next one your study shows?

A. The next one is a shipment of 492 pounds from Pasadena, coming into our warehouse to be ultimately shipped—

Q. What does it show were the necessary or component elements of the job done by the men who handled that job?

A. It showed there were two men on the job. One hour was consumed in going to the residence and preparing their materials at the warehouse. They took with them one small box and one large box and the house packing time for two men was a quarter of an hour. It took them a quarter of an hour to tag and list the merchandise, a quarter of an [364] hour to load the merchandise on their truck and it took them three-quarters of an hour to return to the warehouse, and unloading and checking at the dock was one hour.

Q. Now, have you any other sample studies which you made?

The Court: Just a moment. We will take a short recess.

(Short recess.)

The Court: You may proceed. Mr. Moore, can you give me any idea as to how long it will take to hear your testimony?

Mr. Moore: I think the afternoon should complete our case.

The Court: All right. We will take a recess until two o'clock.

(Whereupon, at 12:00 o'clock noon, a recess was had until two o'clock p. m. of the same day.) [365]

Los Angeles, California, Tuesday, October 29, 1946,
2:00 P. M.

The Court: You may proceed.

Mr. Moore: Your Honor, we have submitted to counsel a resume of the periods of employment of all employees, some of whose cases have not been put in and at the wish of counsel for the plaintiffs we will tender a stipulation on those who have presented their matter to the court. This is a summary of the weeks and an agreement that overtime is five and a half hours and the hourly pay and the amount in dollars and cents for the extension of the weeks at five and a half times the current rate.

Mr. Beardsley: Do you wish to file it with the court? I think we would want to check it a little against our notes and the testimony, but assuming it is correct—Mr. Diegel prepared this computation and it apparently was made in accordance with the stipulation which eliminated the testimony about the number of hours per week right straight through, adopting the flat formula of five and a half hours per week.

We will check it, and it is our agreement, of course, that that goes in in place of the testimony.

Mr. Moore: And that all these other exhibits in evidence for identification will be withdrawn to prevent the accumulation of the record and offer this in evidence for the men whose cases have been presented. [366]

The Court: Very well.

The Clerk: Defendant's Exhibit K in evidence.

(The document referred to was marked as Defendant's Exhibit K, and was received in evidence.)

* * * * *

JAMES CUMMINS,

called as a witness by and on behalf of the defendant, having been previously duly sworn, resumed the stand and testified further as follows:

Direct Examination (Resumed)

By Mr. Moore:

Q. I hand you a copy of an order, Motor Carriers 34278, dated the 19th day of September, 1938, and ask you if that is a copy of the application and permit of the Coast Van and Storage for certain interstate rates in the area of Los Angeles? [367]

Mr. Beardsley: In the first place, I object to it. No foundation has been laid. This of course is six years before Mr. Cummins' connection, and this appears to be a certified copy. I object to it as not the best evidence as to either the application or the order. It is the same point we raised this morning. This is merely a mimeographed sheet which appears to have been torn out of some kind of book, perforated book.

Mr. Moore: I further state this is a copy taken from the files of the Los Angeles office of the Interstate Commerce Commission, submitted to Mr. Cummins by the office of the Interstate Commerce Commission as their file copy of the operating right issued to the Coast Van Lines.

Mr. Beardsley: I object to all of the statements as being merely a statement of counsel and not evidence, and this is not the best evidence of what the order of the Commission may have been.

The Court: The court is interested in the time. It is not within the issues, is it, Mr. Moore?

(Testimony of James Cummins)

Mr. Moore: It runs indefinitely, your Honor, from the issuance—

The Court: Then I think some showing of that kind should also be in the record. However, I will let it in. It speaks for itself.

The Clerk: Defendant's Exhibit L in evidence. [368]

(The document referred to was marked as Defendant's Exhibit L, and was received in evidence.)

Q. By Mr. Moore: I hand you a copy bearing the seal of the railroad Commission of a permit to operate as a city carrier, and ask you if that is a copy of a permit issued to you by the Railroad Commission bearing the official seal?

Mr. Beardsley: That is objected to as not being within the issues of the case. This hasn't anything to do with the Motor Carrier Act. This has to do with the California Railroad Commission.

Mr. Moore: Under the City Carriers' Act. The rights are existent in a city carrier to carry goods in interstate commerce under that franchise. In other words, we are receiving or terminating any shipment in the area in which they are operating under the so-called Los Angeles commercial zones and the City Carriers permit by decision which we will submit to the court in argument, which is found in 3 Motor Carriers, Case 248—that it is a zone in which the Interstate Commerce Commission has power to regulate but which under the franchise given by the State of California grants them the privilege of operating in that capacity as a terminal or as a carrier of goods at the end or start of an interstate commerce movement.

(Testimony of James Cummins)

Mr. Beardsley: My objection is the issuance of a permit [369] by the State of California. It has nothing to do with the issues in this case, as to whether or not the employees or these particular plaintiffs were subject to the regulations of the Interstate Commerce Commission. Therefore, it is not material.

The Court: Let me see the permit.

(Document handed to the court.)

The Court: I will let it in.

The Clerk: Defendant's Exhibit M in evidence.

(The document referred to was marked Defendant's Exhibit M, and was received in evidence.)

Mr. Beardsley: What is the date of the document just admitted?

Mr. Moore: The permit to operate as city carrier is dated the 3rd of February, 1942.

Q. By Mr. Moore: I show you a document bearing the title, Railroad Commission, permit to operate as a radial highway common carrier, dated the 3rd of February, 1942, bearing the seal of the Railroad Commission, and ask you if that is a copy of the permit issued to you for that operation? A. It is.

Mr. Beardsley: The same objection.

The Court: In evidence.

The Clerk: Defendant's Exhibit N in evidence. [370]

(The document referred to was marked Defendant's Exhibit N, and was received in evidence.)

Q. By Mr. Moore: Mr. Cummins, directing your attention to the survey which we were discussing prior to the noon recess, I believe you had shown me one of the

(Testimony of James Cummins)

summaries of that survey. Can you point it out to me, please? A. This 2202.

Q. It shows upon your statement here the breakdown of the hours, preparation and delivery of materials to residents, driving time, Altadena, California; house packing, tagging and listing time; loading at the residence, return to the warehouse. And in the lower right-hand corner I see time for packing and listing of two barrels and three boxes and ask what those two refer to? Are those materials used on the job?

A. That is correct.

Q. And a notation "2 man hours." A. Yes.

Q. Under the heading of hours there appears for preparation and delivery at residence one hour and a quarter, house packing one hour, tagging and listing one-half hour, loading and residence three quarters of an hour. Return to warehouse one hour and a quarter. Are those the figures that resulted from your study of this particular case? A. They are. [371]

Q. The next one, which is No. 2259, which is designated 146 North Parkwood, Pasadena, and under the heading of preparation, delivery of materials to the residence, time was one hour. House packing was one-quarter of an hour.

Mr. Beardsley: This is objected to on the ground it is all in evidence. I have all these figures in my notes from this morning. Please refrain from repeating matters already in the record.

The Court: But counsel may have some other point.

(Testimony of James Cummins)

Mr. Moore: And in the lower left-hand corner there is an itemization of one small box, one large box; time packing itemized, one-half hour?

A. That is right.

Q. Does this item in the lower left-hand corner, "One large box and one small box" indicate the materials that were used in connection with this job? A. It does.

Q. Another study, numbered 2257, under preparation, delivery of materials, an hour and a quarter. House packing one hour and a quarter. Tagging and listing one-half hour. Loading at residence one hour. Return to warehouse one hour. Loading and checking at dock one hour. In the lower left-hand corner of this document appears a notation of time, packing two large boxes, one medium box, one and one-quarter [372] hours. Does that represent the equipment that was used in that job?

A. It does.

Q. Now. No. 2262, there is a preparation and delivery of materials and other items in the left-hand corner. There is the time packing showing 8 barrels, two large, three medium and four small, referring to boxes?

A. That is right.

The Court: Counsel, is this going to be tied in to meet some of the specific plaintiffs in the case, is it not?

Mr. Moore: This, your Honor, will be followed by Mr. Diegel, who has prepared a study on these records, showing in addition to what they have previously determined to be time factors, the use of those time factors in connection with a study of jobs over a period of weeks which indicates the amount of time consumed in driving and loading as compared with packing in opposition to the

(Testimony of James Cummins)

testimony of these men as to what time was consumed in those functions.

The Court: As to each plaintiff?

Mr. Moore: Yes, as to each plaintiff.

The Court: Otherwise it would be immaterial. Suppose there is no showing in the testimony given now that it is in any way connected up with these plaintiffs; it might have been jobs done by men who are not here or who had quit and, of course, then it would not be applicable at all to meet [373] any of the testimony or estimates given by these plaintiffs. You may proceed as long as it is going to be connected up.

Mr. Moore: It is with relation to the time consumed in connection with the barrels and boxes which were used and by an application of the studies the use of the equipment which appears in each of the studies of the individual men to prove the loading and driving as compared with packing time in similar cases.

The Court: Well, these figures here will be connected up with some of the plaintiffs, will they not?

Mr. Moore: These figures will be connected up from the standpoint of showing from the study made by the actual application of the amount of equipment and other items which have been used to determine the hourly basis upon which these averages apply, so when Mr. Diegel presents a study based upon the individual way bills for each man, we have then some basis to indicate what is the reasonable time for the amount of equipment used in each one of these cases.

The Court: But I do not believe this testimony is going to help the court. I am just trying to reach out and find something that is going to help the court in its

(Testimony of James Cummins)

decision. As I see it, this does not apply to a specific plaintiff.

Here a man gets on the stand and says, "I did so and so, and I took so much time." Now, that in the court's opinion, cannot be met by saying, "Well, at another [374] time some other man at some other place or under different circumstances" did certain things. That would be a generalization and I do not see how it is going to help the court.

Mr. Moore: Item No. 2262, for the equipment used there were six man hours spent in packing time?

A. That is correct.

Q. In a study of your operations over a three-months period in the year 1945, what percentage of the packing and crating work did you do? Was it done for loads or jobs running from one to 500 pounds? A. It was.

Q. What percentage of your—

Mr. Beardsley: There is no foundation laid, if the court please, for this sort of testimony. This man obviously isn't the one who prepared the studies and no reference is made to any original record. I object to it on the ground no proper foundation is laid and the further ground that the matter is not probative of any of the issues in this case. The percentage of their work which had to do with smaller or larger shipments hasn't anything to do with the issues in this case or doesn't establish at all what any one of the plaintiffs was doing at any particular time.

The Court: Well, it goes to the weight. Continue, Mr. Moore.

(Testimony of James Cummins)

Mr. Moore: We will call Mr. Diegel. [375]

The Court: Any cross examination?

Mr. Beardsley: Yes, if the court please.

Cross Examination

By Mr. Beardsley:

Q. Mr. Cummins, did you see any of the original records from which these summaries were made?

A. Yes.

Q. You did see them? A. Yes.

Q. Then these numbers which you have referred to, such as 2202 and then the next number in sequence is 2257, did those refer to way bill numbers?

A. Those numbers refer to our file on these particular jobs. It is a Navy number.

Q. So that you took as one sample a job No. 2202 and then the next sample serially of the jobs you had was 2257, is that correct?

A. Whatever number is on there.

Q. Well, now, isn't that correct? It jumps from 2202 to 2257? You have studied none of the ones in between, apparently. A. That isn't so.

Q. It is not so? Why did you pick these particular ones out, one in Altadena and one in Pasadena of all the work [376] you were doing?

A. Could have picked any one just as well as those.

Q. You picked them at random and happened to get three in Pasadena and one in Altadena, is that correct?

A. That is right.

Q. Aren't those rather long hauls, compared with the general business being done by the Los Angeles company?

A. I wouldn't say so.

(Testimony of James Cummins)

Q. You did not happen to pick out any that were in the Los Angeles area?

A. Yes. I have some. We have them from all over.

Q. Now, isn't it true, Mr. Cummins, that when a man goes out, for example, to Pasadena, to do a job of packing normally he would do some other jobs in the same general vicinity and not have travel time from the Coast Van Lines out to each of the jobs?

A. Yes, many times.

Q. These all show travel time all the way, however, from the plant to the job, don't they, and all the way back—each of these studies?

A. I could not say as to that but I could—

Q. Could you say by looking at them if that is not true? A. I could mention further to you—

Q. Just a moment. May I have an answer to the [377] question? Can't you tell by looking at these that actually you picked out instances where you charged the full driving time out to and back from either Altadena or Pasadena as the case may be?

Mr. Moore: Just show them to the witness, Mr. Beardsley.

(Mr. Beardsley handing document to the witness.)

Q. By Mr. Beardsley: For example, you are pointing now to No. 2262, in which you charged for return to warehouse one hour and a half?

A. That is right.

Q. Now, certainly that isn't—that is the charge you made in time for the use of the van and two men driving from that job to the warehouse?

A. That is correct.

(Testimony of James Cummins)

Q. And on the same one you have a trip to the place where you picked it up? A. Yes, sir.

Q. Will you show me where it is?

A. Yes, right there.

Q. What is that time?

A. One and a quarter hours.

Q. So on this particular job that you have picked out as a sample you have two hours and three-quarters of driving time for a job in Pasadena, is that right?

A. That is right. [378]

Q. Now, isn't it clear to you from that that includes a full charge for driving to the job from the Coast Van Lines and back to the Coast Van Lines? It isn't a case where you only charged the time from some other job in Pasadena over there, is it?

A. On this particular job that was all that was done.

Mr. Beardsley: Will you read the question?

(Question read.)

The Witness: I thought you asked me—you had better read it again.

Mr. Beardsley: Let me rephrase it.

Q. On this job there was charged to this particular job full time of going from Coast Van Lines to Pasadena and from Pasadena to Coast Van Lines, is that correct?

A. That is right.

Q. Now, isn't it true that on many occasions, particularly where you are picking up small shipments, the man in the truck packed one or two or three jobs in Pasadena so the driving time between jobs is quite short, compared with this charge of time? A. That is correct.

Q. Now, let me ask you—you say this is often the case—

(Testimony of James Cummins)

Mr. Moore: Did you finish your answer? [379]

The Witness: No, I did not. Can I ask him a question?

The Court: You cannot ask a question but you can explain your answer.

The Witness: To explain my answer. That was the very thing I was going to submit in the next exhibit and point out to you that we did do the very things you want me to say we did.

Q. By Mr. Beardsley: I don't want you to say anything.

A. That we consolidated jobs. That is what Mr. Moore's exhibit over there was for that you objected to, so we could give the court a clear overall picture of our operation.

Q. Is that your explanation?

A. May I say one more thing?

Mr. Beardsley: If the court please, I don't know what the witness refers to—evidently some exhibit. I believe those were all admitted.

The Court: We let them all in.

Mr. Beardsley: My recollection is that we did and the witness turned over to me for cross examination. Now, what I want to ask Mr. Cummins is this:

Q. Is there any one of those jobs about which you have testified where there was the charge merely from another place in the same general vicinity to that job? [380]

A. On these particular ones, no.

Q. That is what I wanted to ask you. Thank you.

Now, is it or is it not a practice of your company, or was it not a practice during the period we are talking about, to charge on some jobs full time, driving time to

(Testimony of James Cummins)

and from the job although the truck and men may have done other jobs in the same neighborhood?

A. I couldn't say as to that.

Mr. Moore: Objected to as not within the issues.

Mr. Beardsley: Well, he said he couldn't answer it so there is no use arguing that point.

Q. Don't you know as a matter of fact that the entries on the way bills of driving time are often made by some employee in the warehouse and not by the person on the truck himself? Do you know that? Yes or no.

A. What was the question?

Mr. Beardsley: Will you read the question?

(Question read.)

A. I would not say they were often made but they were sometimes made.

Q. In other words, the driver or helper on the truck did not always enter the time but sometimes it was entered after the way bill came back into the plant, isn't that correct?

A. No, that is not so. [381]

Q. Is that sometimes what is done?

A. Sometimes.

Mr. Beardsley: That is all.

Redirect Examination

By Mr. Moore:

Q. Mr. Cummins, if a driver or helper failed to make an entry on the way bill was it the custom of the dispatcher when he returned to the place, to inquire as to what the information was and place it on the way bill?

A. It is.

The Court: Now, counsel, that is an absolutely leading question.

(Testimony of James Cummins)

Mr. Beardsley: Will you read the question?

(Question read.)

Mr. Beardsley: Objected to.

Mr. Moore: The question is withdrawn.

Q. Mr. Cummins, on the item just referred to by Mr. Beardsley, will you tell us whether or not the merchandise, where they packed it was in turn put on the same truck and brought back to your warehouse? A. It was.

Q. What instructions are given to drivers with regard to entries to be made upon way bills?

Mr. Beardsley: That is objected to until the proper foundation is laid and connection is made with these [382] plaintiffs and with this period involved.

The Court: It is immaterial what instructions were given. Suppose they gave them instructions and they didn't follow them? It is what they did and not what they were told to do.

Mr. Moore: That is all.

Mr. Beardsley: That is all, Mr. Cummins. My two men are here now, Mr. Moore. Would you like for me to put them on?

Mr. Moore: All right.

Mr. Beardsley: Is that satisfactory to your Honor?

The Court: Yes.

Mr. Beardsley: Mr. Fisher.

KING FISHER,

called as a witness by and on behalf of the plaintiffs,
having been first duly sworn, was examined and testified
as follows:

The Clerk: State your full name.

The Witness: King Fisher.

Direct Examination

By Mr. Beardsley:

Q. What is your residence address?

A. 121½ West 36th Place.

Q. Were you employed by the Coast Van Lines at
some time? [383]

A. Yes, sir. [384]

* * * * *

Q. Now, what were your duties during the first period
you worked there?

A. Well, I was hired out as a packer, Navy packer.

Q. Do you know what proportion of the goods you
worked on were under the Navy contract?

A. As near as I know, yes.

Q. What proportion of them were?

A. Oh, I should 80 or 90 per cent.

Q. Do you know what proportion of them were going
in interstate commerce, between the states?

A. No, I don't know. I wouldn't have no idea of
that.

Q. Now, in the second period what were your duties?

A. The same thing, packing.

(Testimony of King Fisher)

Q. And what was the fact in the second period regarding [385] Navy goods, Navy contract goods?

A. The same line.

Mr. Beardsley: Cross examine.

Cross Examination

By Mr. Moore:

Q. When you started your employment, Mr. Fisher, were you acting as a packer at that time?

A. Yes, sir. [386]

* * * * *

Q. What percentage of your time did you spend packing?

A. Oh, I don't know how you could figure that. We drive out to a job and pack it and when you get it packed you were through with it.

Q. What percentage of your time did you spend driving?

A. Depends on where we was going at. Different times one place and another time another place. Maybe it would take an hour and a half to go out there and maybe the next place take you 40 minutes. Maybe the next one 30 minutes.

Q. What percentage of your time did you spend loading?

A. Well, that all depends on the job, too.

Mr. Moore: That is all.

Mr. Beardsley: Mr. Smith. [387]

SIDNEY A. SMITH,

called as a witness by and on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

The Clerk: State your full name.

The Witness: Sidney A. Smith.

Direct Examination

By Mr. Beardsley:

Q. What is your address, Mr. Smith?

A. What?

Q. Your residence address?

A. 949 East Hyde Park.

Q. What city? A. Inglewood.

Q. Were you employed by Coast Van Lines, the defendant in this action, at some time?

A. Yes, sir. [388]

* * * * *

Q. By Mr. Beardsley: Now, what were your duties during your period of employment there?

A. Well, I hired out as a packer and then I was a packer and driver and—

Q. What sort of driving were you doing? On what sort of hauls?

A. Oh, I was on that Navy—that flat truck on the Navy hauling from Long Beach, going from here to Long Beach all the time—hauling Navy freight.

Q. During what period were you doing that?

A. I couldn't tell you what period but I done it for about a year.

Q. How long were you employed as a packer?

A. Well, I don't know how you classify that. I hired out as a packer altogether, would you call it?

(Testimony of Sidney A. Smith)

Q. How long was it you did that work before you started driving back and forth to Long Beach?

A. Oh, I would say about four months.

Q. And then was it after that first four months period that you began driving back and forth to Long Beach?

A. Yes, on the freight truck.

Q. Flat truck? A. That is right.

Q. Between what points were you driving? [390]

A. On Main Street and Long Beach.

Q. At what place at Long Beach?

A. I think it was 2066 Santa Fe, where the Coast had their place down there, and from there to the Navy Supply Depot, and picked up stuff there all the time.

Q. Now, what did you do after that year?

A. Well, I done just, mostly everyone of the rest of them. I packed and drove and helped and everything else.

Q. During all the rest of the time you were with the company? A. That is right.

Q. Do you know what your classification was?

A. Packer.

Q. What were your principal duties aside from that year that you drove back and forth to Long Beach?

A. Well, what do you mean?

Q. What did you spend the majority of your time doing?

A. Well, we spent about—a lot of it in packing and a lot in driving and a lot in loading. You see, we would go out on a truck and we would pack it and load it and bring it in.

(Testimony of Sidney A. Smith)

Q. Do you know what percentage of your time was spent in each of those activities?

A. That would be hard to say. I would hardly want to say that.

Q. Do you know what proportion of the goods you worked [391] on were goods handled under the Navy contract?

A. Do you mean in freight or all together?

Q. When packing particularly?

A. (No answer.)

Q. What was the proportion?

A. Well, I would say it was about 50-50 anyway.

Q. Of the part which was not under Navy contract?

A. No, that don't include that.

Q. Well, what I am asking you now, is, what proportion of the goods you worked on was under the Navy contract and what proportion was other business of the company than Navy?

A. Well, I never did much other business outside of Navy.

Mr. Beardsley: Cross examine.

Cross Examination

By Mr. Moore:

Q. Were you doing the same type of work that you described in January of 1945, driving and packing and loading?

A. I think it was, yes, sir.

Q. And the same thing in March 1944?

A. Well, in '44—'43 I think is when I was driving the flat truck for the Navy altogether so I don't know just how long it were. Otherwise from—

(Testimony of Sidney A. Smith)

Q. In January of '44 were you carrying on this typical operation of driving and packing and loading? [392]

A. Yes; that was the same thing.

Q. In March of 1944 were you carrying on a typical operation of driving, packing and loading?

A. Now, you got me. I don't know. When I went back home in March I was gone about five months, I think. If you have the record there you can tell because I don't remember just when it was. It might have been March when I went back to Omaha, and I came back in the last of July, I believe it was when I left Omaha. That is when I went back to work for the Coast.

Q. What year? A. '44.

Q. Well, after you left your driving job in Long Beach whatever other periods of time that you were employed by the Coast Van Lines, did you do the typical work of packing, driving and loading?

A. That is right.

Q. There wasn't any particular period that you did any more loading or packing or driving in one month or another? A. That is right.

Q. It all run about the same?

A. That is right.

Mr. Moore: That is all.

Mr. Beardsley: That is all, Mr. Smith. [393]

Mr. Moore: Do the plaintiffs rest?

Mr. Beardsley: Yes.

Mr. Moore: Call Mr. Diegel.

MAYNARD DIEGEL,

called as a witness by and on behalf of the defendant, having been previously duly sworn, was examined and testified further as follows:

Direct Examination

By Mr. Moore:

Q. Mr. Diegel, in reference to the plaintiffs in this case, have you made an examination of the records to attempt to reduce certain facts concerning their functions?

A. I have.

Q. For the purpose of that will you tell us what documents and source of reference you have gone to for it?

A. Our purpose was to show the court the actual time spent on the various jobs and to do this we have taken the original sheets from what we call our cartage book. It is a book on which the dispatcher enters all of the orders for each day.

We have taken this sheet and determined by information written on it, written on it by the dispatcher or information written on other documents, such as the way bill or packing lists, who did each job. We have eliminated the names of the men that were not involved in this suit and just [394] taken the ones that we have heard in this case.

The other documents that we have used to support this study are the way bills pertaining to each individual case and billings, such as invoicing to the Navy, with supporting papers, and other documents that pertained to each individual case, bringing out the information that we wanted to set forth.

To do this we have taken what we call a week of days. We have started with a Monday, July 2nd, 1945. We

(Testimony of Maynard Diegel)

picked July because we had already pulled quite a number of—quite a quantity of our records and had them out and available. It seemed as good a month to us as any, inasmuch as the volume there was a very good average. It wasn't low or it wasn't high. So, we took this week of days, starting, as I say, with Monday, July 2nd—

The Court: ' What year?

The Witness: 1945, Tuesday, July 10th, 1945, Wednesday, July 18th, 1945, Thursday, July 26th, 1945, and Friday had to be in August, the 3rd, 1945. Now, all the men involved in this suit that worked during that particular week of days, were Magnus and Vaughn, who worked as, you might say, a team, and Key and White, who worked as a team, and Ira Holder, who worked as a helper. His driver was not one named in the suit.

Garcia was the driver. He is involved in the suit [395] but his helper was not so his name was left off. Therefore, we have for this particular study six of the men involved in the suit.

Now then, for the Monday, July 2nd, 1945, and this is a sheet from our cartage book and—

The Court: Mark it for identification so we will know what exhibit we are referring to.

The Clerk: Defendant's Exhibit O, for identification.

(The document referred to was marked as Defendant's Exhibit O, for identification.)

Mr. Moore: Indicating just the one side, showing Monday, July 2nd.

The Court: There is no objection, Mr. Beardsley, if you want to stand up with Mr. Moore and examine the exhibit as it is testified to.

(Testimony of Maynard Diegel)

Mr. Beardsley: Thank you, your Honor.

The Court: It will shorten the examination.

Q. By Mr. Moore: Go ahead, Mr. Diegel.

A. Now, as I explained in the preliminary remarks, we determined from our records, either from the truck numbers or from other identification on the way bills who did each job and eliminated everyone that did not pertain to the case and taken the ones that did. We start out here with Lou and Chappie, which refers to Louie Vaughn and Magnus. They had several jobs on that day which are summarized here on [396] this recap. They did four jobs out of this day's work July 2nd, 1945, on way bills No. 4309, 4308, 5008 and 4906.

Now, of those jobs I have each individual one here and I will go over a few of them and offer the rest of them as evidence. The first one is 4309. It is for a man named Tarwater and Magnus and Vaughn went to this house on Beverly Glen Boulevard to pick up goods to be hauled to San Francisco. This was on a Navy order and the goods had to come in to the warehouse and then loaded on the long distance van and taken to San Francisco, but brought into the warehouse by Vaughn and Magnus.

The evidence of that is an inventory of household effects received, signed by Lou and Chappie, and also signed by Tarwater. It shows Lieutenant Tarwater having given the goods to the men and the men gave a copy of this for a receipt.

Q. What is that called?

A. Inventory of household effects received.

(Testimony of Maynard Diegel)

Q. What does this indicate, the signatures of these men and Tarwater?

A. They say here they have received the above items in the condition as above noted and the owner or agent of the owner signs as having—

Mr. Beardsley: Do you know the signature of Tarwater and of these two men? [397]

The Witness: No, but it is either Tarwater himself or his agent. It is J. W. Tarwater, Lieutenant, U. S. N. R., and these two men. I know that this is Chappie who wrote it for both Louie Vaughn and himself. Chappie is Magnus.

Mr. Beardsley: I will object on the ground no proper foundation laid. These men have been in court and could have identified their signatures if the matter is important.

The Court: It goes to the weight of the testimony more than to its admissibility.

Q. By Mr. Moore: Now, will you go ahead with a description of what this way bill and the supporting documents attached to it indicate?

A. All right. This supporting document is a copy of the invoice made to the Navy and this is the inventory of household effects received and on this there was no packing done because it is marked "Van haul only," so we merely—this study has been brought out merely to show the number of packing hours. We disregarded everything else but packing time, and just merely put a check mark on that. However, Magnus and Vaughn did pack that job on another order. Here is the order—Van pack only for Tarwater. When they packed that they packed this list, which is their—they have to list it and weigh each individual item because we have to bill the Navy for the

(Testimony of Maynard Diegel)

packing at so much per hundred pounds. We have to know how much they packed and here is what they [398] packed on it which consists of four barrels, one large box, three small boxes, and that is all.

Now, we have used a formula which is based on the findings that our company made a year or so ago in making a cost study. Also we have checked this with other cost studies made by other companies in the industry and from our own experience in the business we know that on the average that it takes about three-quarters of an hour to pack a barrel, three-quarters of an hour to pack a large box, a half hour to pack a medium size box, and a quarter of an hour to pack a small box. We have used that as a formula in establishing the amount of time consumed in actual packing on these jobs made in this study. Therefore, on this particular one of Tarwater's, on Way Bill 4308, with packing as I have already mentioned coming to two hours and a quarter time—

Mr. Beardsley: May it please the court, if this line of testimony is offered as counsel indicated a while ago, to impeach the witness' testimony, I believe it is inadmissible. I do not believe the testimony is impeachable by matters based upon averages worked out on a study of the business of the company. I object to it on that ground.

The Court: It isn't so much impeachment, in my opinion, because you cannot impeach a guess. There is no way in law to impeach a guess or estimates. It is part of [399] the defendant's case to show, for instance, they didn't work at all, or something of that kind, to meet the issues. I do not believe it is on the theory of impeachment, is it, Mr. Moore?

(Testimony of Maynard Diegel)

Mr. Moore: This is the defendant's case in chief to show what the records show these men have done.

The Court: All right, proceed.

The Witness: The next case, on Way Bill No. 5008, for Goldwyn. There is evidence in the supporting papers that Magnus and Vaughn picked up one box. It was a medium box and we gave them in the study a quarter of an hour each for packing the medium box, so for that day that was all the packing they did. However, they did one more hauling job for a party by the name of Wynant, from Glendale into the warehouse. It was a small Navy job and on it there was no charge made for packing and there was nothing to be packed, although it was marked "Contract packed" or "Packed by owner." All the items, four boxes, were marked B.P.O., which means Packed by owner, and they were brought in in the same condition that they were found at the house. Consequently, there was no packing time accounted for, computed in that, and we just merely checked it as a hauling job. It is shown on here.

Q. By Mr. Moore: The last reference you made to a document, which shows that they were owner-packed, is on the sheet which bears the signature of Lou and Chappie, and which [400] is the household goods inventory which is prepared by the driver who goes out on the job?

A. Yes.

Mr. Beardsley: Leading and suggestive, if the court please.

The Court: Yes, try to avoid leading questions.

(Testimony of Maynard Diegel)

Q. By Mr. Moore: When a driver leaves the place of business does he take with him any particular documents?

A. He has as part of his equipment orders on which to perform the jobs and also inventories and household effects received, so he can give the customer a copy of anything he might take from their house.

Q. Can you state whether or not the inventory of household effects is on the stationery of the Coast Van Lines or is not a part of the equipment carried by drivers or helpers?

A. Yes; that is our stationery, and it is carried by the drivers of the vans. So, for Monday of this day, Magnus and Vaughn—we have two men who worked all day and maybe some overtime which I haven't taken into consideration. I have just merely shown the amount of time that they consumed in packing, which amounts to two and one-half hours for each man out of their eight hours work or more.

The next is for Key and White on this particular test. Monday they worked on job way bill 4971, for Holmes [401] and Narver. They hauled goods from our warehouse on Margo Street to Holmes and Narver's address on Spring Street. They, according to their time filed in here, worked all day on the job. There was no packing or unpacking charged and there was none done on this job. So I just merely checked that as a hauling job. Didn't show any packing time.

On Holder we have four jobs to enter for this Monday, July 2nd. One is 4967 and it is for going to Beverly Hills and packing one barrel and one box as indicated here. The C. P. is an abbreviation down below which means

(Testimony of Maynard Diegel)

Contract Packed, and that box and that barrel were packed by them and using the same formula as mentioned before we gave each man on the job three-quarters of an hour for packing those two items and Holder would get his three-quarters of an hour for packing time.

The next one is 4976. On this he picked up three cartons—a sea bag and trunk and all the cartons were owner-packed. There was no packing, so we merely noted that as a hauling job.

The next is way bill 55005 for Tompkins at 3855 Roxton Avenue. It was a packed and crated job that Mr. Holder went on and there were nine items in this particular shipment and the first two miscellaneous boxes were the only two contract-packed, packed by us. So, they gave them credit then for packing two medium boxes and we gave a half [402] hour to each man or an hour for packing the two medium boxes, and gave Holder credit for a half hour packing time.

The next job was—

Q. Now, were there other things that were brought in or carried in that same load after the packing had been completed?

A. Yes. All of these other items were loaded into the van and they were hauled back into the warehouse and unloaded by these men.

Q. That appears on the inventory of household effects and the balance of the items, three through ten, book shelves, small chest of drawers, chair, desk, corner shelf, wall mat, sweeper?

A. No packing on this. Just merely loaded into the van and brought into the warehouse.

(Testimony of Maynard Diegel)

Q. All right, what is the next one?

A. The next one is 5006. They proceeded to 2179 West 21st Street, Bailey's house, and they picked up these items which were as evidenced—trunk locker and sea bag, four sea bags; carton owner-packed. Another carton owner-packed, and three handbags—four handbags, another trunk, and a crib; mattress and coffee table and glass. None of that to be packed, so we merely checked it as—I gave them a quarter-hour packing time. It was owner-packed. I shouldn't have given any packing time. [403]

Q. What is the interpretation of the symbols O.P. as far as the office is concerned? A. Owner-packed.

Q. Can you tell us what that means?

A. Well, when the owner packed, why, the boxes already are packed and we pick it up and consequently there is no packing for us to do and we cannot bill the Navy for it nor give any credit to anybody for it.

Q. Well, is there any other service rendered besides the loading and delivering on it by your company?

A. Yes. Our operation which is often referred to as a pack and crate operation involves picking it up at the house—picking these goods up at the house and bringing them in, packing whatever is necessary at the house and bringing them in to the warehouse and crating them for shipment.

Q. All right. What is the next one you have?

A. That was all for Holder for that particular day and he has an hour and a half packing time out of his eight hours work.

(Testimony of Maynard Diegel)

Garcia is the next one with way bill No. 4119 for a man named Lux. We went to his residence at 1440 North Gardner and we picked up three boxes, a small trunk, and a suitcase, and on that we find that those three boxes were packed by our men and the weight of the three boxes— [404]

The Court: Some of the plaintiffs in this case?

The Witness: Yes, this is Garcia, Dave Garcia.

Q. By Mr. Moore: Did he do the packing?

A. Yes, he did his part of the packing. There was a helper with him and they both do packing when they come to the house. The three boxes they packed were two small boxes and one medium box and figuring on the formula we already stipulated—

Mr. Beardsley: There is no stipulation, if the court please.

The Witness: Pardon me—pardon the term, Mr. Beardsley. Three-quarters of an hour for each—three-quarters of an hour for each man.

The next job was on way bill 4120 for a fellow named Clearwater. Garcia driving the truck went to 1131 South Bronson Street on what they call a pack and crate job, and picked up one box and on the instructions the dispatcher has written, "No packing." There was no packing charge and he merely picked up the box and brought it in, so we just checked that as the hauling job. That is 4120.

The next is way bill 4003. This is for another job for this Mr. Lux. One was going to one city and this one is going to another. Two different destinations. This box, No. 1 box, weighed 174 pounds, enough to give it a large classification, and we gave each man a half hour

(Testimony of Maynard Diegel)

credit for [405] packing on that box. That is an hour to pack that box. Half hour for Garcia.

The next is 5004. They went to Hollywood. Garcia drove with instructions from the dispatcher. There was no packing. They picked up this box, owner-packed, a small trunk, owner-packed, a carton that was in bad order and ironing board that had mars and scars on it and they loaded it onto the truck and brought it in and we just checked it as a hauling job.

Q. Those symbols you refer to are the items appearing under heading "Condition"? A. That is right.

Q. O.P. or B.O. or M.S.

The Court: Doesn't this instrument speak for itself? It seems to be in great detail, Mr. Moore.

Mr. Moore: There is an explanation of the symbols to be made.

The Witness: The next is 4974.

The Court: Is it necessary to read this into the record?

The Witness: I can summarize it.

The Court: It does not even need to be summarized. The instrument speaks for itself. That is my point. Offer it in evidence.

The Witness: 4974— [406]

Q. By Mr. Moore: Just a moment, Mr. Diegel. These records that you have examined and those from which you have testified have given you certain facts and figures and can you give a resume of what they show from the same results—I mean, from the same type of breakdown which you have given for these sample cases?

A. Yes. For this week of days the sum total of it is—

(Testimony of Maynard Diegel)

Mr. Beardsley: I object again. There is no proper foundation laid and it does not tend to establish any issue in the case, if the court please.

The Court: Well, I will let the summary in. Where there are voluminous records the rule of evidence is that a summary made by one who is familiar with the records and an expert, can be introduced in evidence, but opposing counsel must have made available to him all the records upon which the summary is based for the purpose of cross examination. That is the rule of evidence. I will permit this to go in but I do not believe it is necessary to read every item that appears on the face of the exhibit. Go ahead.

The Witness: The total packing time per week per man in hours—Magnus had nine and a quarter hours, Vaughn nine and a quarter hours, White three hours, Key three hours, Holder ten and a quarter hours; Garcia nine and a half hours. That is for a week of five days, 40 hours, and this is all [407] the supporting data.

Q. By Mr. Moore: And these are the supporting documents which appear in summarized form in this document? A. Yes.

Mr. Moore: I ask these be marked for identification.

The Court: Yes.

The Clerk: As one exhibit?

The Court: Yes.

The Clerk: That will be Defendant's Exhibit P for identification.

(The documents referred to were marked Defendant's Exhibit P. for identification.)

(Testimony of Maynard Diegel)

The Court: We will take our afternoon recess at this time, for ten minutes.

(Short recess.)

The Court: You may proceed.

Q. By Mr. Moore: Mr. Diegel, have you made any similar examinations for other persons covering other employees who were not on the payroll in July of 1945?

A. Yes, we have.

Q. Have you that with you?

A. Yes, sir. This is a similar report and it shows—

Q. Does it have the supporting documents with it in the same fashion as you described the first one? [408]

A. It has with the exception of the cartage ticket sheets which we were unable to produce.

Q. By that you mean the large white sheets?

A. Yes, but we have taken all of it. In those days they filed the way bills for each particular month like, for instance, the month of March in 1944. All of March way bills were filed together. We have pulled all of the March way bills and segregated them as to the drivers and helpers who are in this suit and happen to be Fisher and Peterson and Smith. On those three we have made the same sort of study as we made in the previous report.

The summary of the three is that we used the work week, starting Monday, March 6th, 1944, and running through Tuesday, March 14th, 1944, Wednesday, March 22nd, 1944, Thursday, March 30th, 1944, and Friday, April 7th, 1944.

Q. What was the finding that you made on the men on this sheet.

(Testimony of Maynard Diegel)

Mr. Beardsley: May it be stipulated the same objection is interposed as to the other?

The Court: So understood.

Q. By Mr. Moore: What are your findings in connection with the party in this suit for this period?

A. Well, of the work week of five days, 40 hours, we find that the packing time for Fisher was 12 hours—actual time used in packing. For Peterson it was 12 hours and for [409] White was two hours and a half. I would like to say that these are no unusual weeks. They are average weeks.

Mr. Beardsley: That is objected to and no proper foundation laid, and ask it be stricken. There is no evidence of a similar study being made for any other period.

The Court: Sustained. It was a voluntary statement and it may go out.

Mr. Moore: I offer this as defendant's next numbered for identification.

The Clerk: Defendant's Exhibit Q for identification.

(The document referred to was marked as Defendant's Exhibit Q, for identification.)

Q. By Mr. Moore: Mr. Diegel, going back to the period in July 1945, can you tell us whether or not there has been a study made of the records of the corporation to determine for the work done by the various members of the—for the various plaintiffs, a determination of the amount of business they did or hauled or handled in intra- or interstate commerce?

A. Yes. At the same time we were preparing the other records and studies on this July of 1945, we made a list of each one of the drivers and helpers who worked

(Testimony of Maynard Diegel)

for us at that time and we find that in the case of Key—

Mr. Beardsley: Same objection to this line of questioning [410]

The Court: It may be so understood. Same ruling.

Q. By Mr. Moore: Go ahead.

The Witness: That he performed 32 jobs in that month as per this list. 22 of them were intra-state movements and ten of them were interstate movements.

In the case of Noble White, who was Key's partner, it is the same: 22 intra-state and 10 interstate.

In the case of Magnus there were 49 way bills in the study. 25 of them were intra-state jobs and 24 were interstate jobs.

In the case of Vaughn there were 45 in the study. 23 were intra-state and 22 were interstate.

In the case of Holder there were 52 jobs. 28 were intra-state and 24 interstate.

In the case of Garcia there were 55 intra-state and eight interstate.

Q. That is all of the men in the suit?

A. No. That is all that drove and helped on the vans in this particular month.

The Court: July?

The Witness: July of '45.

Mr. Moore: I offer the work sheets to which the witness testified as defendant's next in evidence.

The Court: It will be received subject to plaintiffs' objection. [411]

The Clerk: Defendant's Exhibit R in evidence.

(The documents referred to were marked Defendant's Exhibit R, and were received in evidence.)

(Testimony of Maynard Diegel)

Mr. Moore: You may cross examine.

Mr. Beardsley: No questions.

Mr. Moore: The defendant rests.

The Court: Any rebuttal?

Mr. Beardsley: I only anticipated putting on Mr. Key but he is not here and I did not know when counsel was to finish. Do you want his testimony?

Mr. Moore: No.

Mr. Beardsley: That is all. We rest.

Regarding this Defendant's Exhibit K, the summary of the hours, weeks, rates of pay and so on, which was to cover our stipulation, I have not had an opportunity to check it. It has just been handed to us this afternoon. In looking at the first two or three employees I notice there are some periods shown by the summary where they are not—it appears they were not employed. For example, in Mr. Armstrong's case he was not employed for a period of four months or three months in the early part of 1943, and two months in the early part of 1946. His testimony, I believe, was that he was employed straight through. Of course, we are not willing to stipulate unless there is some showing that he was not employed during those times. [412]

In the case of Mr. Fisher he testified he worked a year in '42 and '43 which is not shown at all.

If that is a result of your records being burned by the fire I think that counsel and I can probably confer and arrive at an average for the periods which are not shown.

I am not ready to stipulate this is accurate as to those periods which are omitted about which the men testified they were actually employed.

There may be some explanation Mr. Diegel can give as to the intervals that do not show employment.

Mr. Moore: Your Honor, we have taken every available source, including Social Security records, the personnel records which were burned, and I think a sample of them were shown to the court at the outset of the proceedings and every available record in the custody of the defendants has been used in trying to gather all of the detail that has gone into that exhibit.

Mr. Beardsley: Then I will say that I think, having produced testimony that the employees were employed straight through, and if there is no record which contradicts that, the computation should include pay at the same rate which appears before and after the time when you do not show the man was employed through that time. The loss of their records should not result in a loss to the men. Our [413] stipulation was that the company make the computation and we would take a flat five and a half hours a week right straight through from the first to the last date of employment instead of trying to prove week by week which Saturdays were worked and which Saturdays constituted work over 40 hours per week, and that is the method on which this computation has been made, excepting it eliminates or omits certain periods on the employees I have checked thus far.

Now, I would like to do that by conference with counsel. I think this is a framework on which we can make the stipulation and finally I think that the court make a determination and of the principal issues of the case, and let that computation be completed for the purpose of making the findings.

The Court: Gentlemen, I will ask you to prepare for me just a three or four-page summary of what your con-

tentions are. I have voluminous notes here but I want to be sure I am not overlooking anything. I have 16 pages of notes. I have kept pretty well upon the progress of the trial. It is unfortunate that many of the records have been destroyed which has required an unusual length of time to try the case.

You will return at 9:30 on Monday morning and I will give each side 15 minutes to point out to the court what they believe are the two or three main issues in the case just to be sure I shall not overlook anything. [414]

Gentlemen, the court will recess.

(Whereupon, at 4:00 o'clock p. m., a recess was had in the above entitled matter until 9:30 o'clock a. m., Monday, November 4, 1946, for argument and further proceedings.)

[Endorsed]: Filed Apr. 28, 1947. [415]

[Endorsed]: No. 11635. United States Circuit Court of Appeals for the Ninth Circuit. *Coast Van Lines, Inc.*, Appellant, vs. Bert Armstrong, L. A. Charette, King Fisher, Dave Garcia, Earl Graham, Ira C. Holer, Louis Kanier, Emry Key, Richard Magnus, Leon T. McGrossen, George W. Peterson, Thomas P. Remus, Joe P. Sevedra, Sidney H. Smith, Louie Vaughn, Noble F. White, Harold N. Wheeler and Morris Wolf, Appellees. Transcript of Record. Upon Appeal From the District Court of the United States for the Southern District of California, Central Division.

Filed May 22, 1947.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

United States Circuit Court of Appeals
for the Ninth Circuit

No. 11635

COAST VAN LINES, INCORPORATED, a California
corporation,

Appellant,

vs.

BERT ARMSTRONG, et al.,

Appellees.

NOTICE RE POINTS ON APPEAL

To Appellees Above Named and to Herbert V. Walker
and Charles Beardsley, Their Attorneys:

Please Take Notice that appellant in the above entitled cause hereby elects to adopt and stand upon the statement of points on appeal already appearing as a part of the transcript herein, this to satisfy the requirements of subdivision 6 of Rule 19, Rules of Practice of United States Circuit Court of Appeals for the Ninth Circuit.

Dated this 29th day of May, 1947.

JOHN W. PRESTON and
PRENTISS MOORE

By John W. Preston

Attorneys for Appellant

Receipt of above Notice is hereby acknowledged. 5/29/47. Herbert V. Walker and Charles Beardsley, by Charles E. Beardsley, Attorneys for Appellees.

[Endorsed]: Filed Jun. 2, 1947. Paul P. O'Brien,
Clerk.

[Title of Circuit Court of Appeals and Cause]

STIPULATION CONCERNING EXHIBIT "K"

It Is Hereby Stipulated by and between the appellant and appellees herein, acting through their respective counsel, that appellant makes no exception or objection to Defendant's Exhibit "K", and that all parties agree that all items shown by Exhibit "K" are true and correct and admitted in evidence for all purposes without reservation.

Dated this 18th day of July, 1947.

JOHN W. PRESTON and
PRENTISS MOORE

By John W. Preston

Attorneys for Appellant

HERBERT V. WALKER and
CHARLES BEARDSLEY

By Charles E. Beardsley

Attorneys for Appellees

[Endorsed]: Filed Jul. 21, 1947. Paul P. O'Brien,
Clerk.